Erlenborn file

THE WASHINGTON POST DATE 16 MAR 74 PAGE 22

Congress Prepares New Attack on Executive Privilege

By William Greider
Washington Post Staff Writer

Congress is preparing to take another legislative swipe at the power of the presidency, this one aimed at winnowing out "executive privilege" as a way to withhold White House information from the legislative branch.

A measure with bipartisan sponsorship, approved yesterday, 24 to 16, by the House Government Operations Committee, would force the President to provide a personal explanation within 30 days when he invokes "executive privilege."

The House or Senate, if either body were unsatisfied with his reasons, could then initiate a civil suit in federal court to determine whether the denial of information met "a compelling national interest."

The measure is likely to renew the constitutional debate over presidential powers which surrounded the war powers bill enacted last year over President Nixon's veto. Sponsors think another veto is likely and that the same votes can be assembled to override it.

But the bill is also under attack from some liberals who insist that Congress should not even concede the existence of "executive privilege" by legislating on it, an argument which parallels what some of them also said against the war powers bill.

The Senate has already enacted a similar bill with slightly different mechanics. It was passed quietly in late December without debate. The House measure is co-sponsored by Rep. John Erlenborn (R-Ill.) and William Moorhead (D-Pa.), and 41 others.

"The problem," said Erlenborn, "has been that the only way we could test executive privilege was to hold the President in contempt of Congress. That is such an awesome weapon and so abrasive that the Congress just hasn't done it. What we've done, in effect, is to allow the President to invoke executive privilege and, in the process, he defines it."

"We have opposition from both sides," said Moorhead. "The liberals are saying we shouldn't legislate at all because the Constitution already gives us more power, while conservatives think that we're impairing the power of the President. Then there's the great unwashed middle which thinks this bill really is progress."

Rep. John Moss (D-Calif.), one of the leading opponents, argues that the measure implicitly grants the President a right to refuse information, which is not provided by the Constitution. Both Government Operations Chairman Chet Holifield (D-Calif.) and the ranking Democrat, Rep. Jack Brooks (D-Tex.), opposed the measure in committee yesterday, so it will face considerable difficulty in clearing the House.

The proper remedy to claims of executive privilege, Moss said, is simple—"a plain stiffening of the congressional spine and a little bit of guts to stand up to the Executive Branch as aggressively as the Executive has stood up to Congress."

The most familiar clash between White House and Congress has come over the appearance of White House aides who normally refuse to appear before congressional committees, even though they may be more powerful in policy decisions than the Cabinet officers who do testify.

The legislation would require these aides to show up and, if they refused to answer questions on any subject, the President would have to explain why in writing. The bill doesn't mention "executive privilege" by name and doesn't attempt to define what might be worthy reasons for refusing to disclose White House information.

The rationales could range from the traditional claim of the President's need to enjoy confidential advice from his staff to special instances where diplomatic or military strategy would be jeopardized by disclosure. In any case, the U.S. District Court here would be assigned the job of determining the scope of executive privilege on a case-by-case basis.

In recent years, according to a study by the Library of Congress, the use of executive privilege has increased dramatically, but that might be partly attributable to the fact that President Nixon has faced a Congress controlled by the other party while Presidents Kennedy and Johnson enjoyed majority support in Congress.

According to the study, Nixon, Kennedy and Johnson all promised that "executive privilege" would only be invoked by each of them personally — but officials in all three administrations ignored that pledge and claimed the protection without explicit authority from the President. Usually, agency officials simply refused to testify before congressional inquiries.

Kennedy used it once himself and lesser officials used it [illegible] times with his imprimatur, according to the study, Johnson never used it personally, but others in his administration invoked it twice on their own.

During President Nixon's first four years, he claimed executive privilege four times himself. Other agencies outside the White House, from the Pentagon to the Cabinet Committee on Opportunities for the Spanish Speaking, have refused testimony or documents on 15 occasions. Executive privilege has been invoked again in the President's Watergate defense during his second term.

The proposed legislation states that the House or Senate would initiate the civil legal test by a resolution declaring that the congressional need for the disputed information "outweighs the grounds cited by the President for withholding the information or testimony." The judge could examine the papers in secret in order to determine which branch of government would prevail.

The bill also makes an exception of impeachment matters. It states that under no circumstances can a President conceal any information which the House or Senate considers relevant to an impeachment investigation or trial.

House Votes Changes In Information Act

The House passed a bill yesterday intended to correct what sponsors said were procedural weaknesses in the Freedom of Information Act.

The measure, passed 383 to 8 and sent to the Senate, specifies, among other things, that the public must be given access to the records of the various bureaus and divisions comprising the Executive Office of the President.

NEW YORK TIMES DATE 15 MAR 74 PAGE 15

By 383 to 8, House Votes Bill to Strengthen Public's Access to Government Information and Records

By RICHARD L. MADDEN
Special to The New York Times

WASHINGTON, March 14 — Despite opposition from the Nixon Administration, the House passed today legislation aimed at strengthening the public's access to Government information and records.

The bill, which was passed by a vote of 383 to 8, now goes to the Senate, where a judiciary subcommittee has approved a similar measure.

At the same time, the House Government Operations Committee, splitting 24 to 16, approved a separate bill that would let the Federal courts determine—except in an impeachment proceeding—whether a President could withhold information from Congress.

However, the bill now goes to the House Rules Committee, where it faces an uncertain fate, and Administration officials have warned of a presidential veto.

Under the committee bill, a Congressional committee could get House or Senate approval to go into court whenever the President directed an agency to withhold information sought by the committee.

Several Democrats opposed the bill, which had the support of a number of Republicans. Representative Jack Brooks, Democrat of Texas, said it was "disastrous legislation" that would "inscribe into law the concept of executive privilege and give to every agency of the Government, as well as the President, the appearance of legitimacy in denying certain information to Congress."

The bill approved by the full House dealing with the public's access to records would make the first changes in the Freedom of Information Act of 1966 and would give Federal courts the option of privately examining any classified documents to determine if the documents had been properly withheld from the public.

The provision would reverse a recent United States Supreme Court decision, which said that the contents of documents withheld from the pubic, such as for national security reasons, were not reviewable by the courts.

The Supreme Court's ruling in January was on a suit brought under the Freedom of Information Act by Representative Patsy T. Mink, Democrat of Hawaii, and other members of Congress who had sought to force the disclosure of classified documents relating to an underground nuclear test.

"This bill offers a sensible and workable compromise between a democratic government and the government need for national security," Representative Spark M. Matsunaga, Democrat of Hawaii, said during the relatively brief House debate.

There was no discussion of whether President Nixon would veto the bill if it reached him, but the Departments of Justice and Defense have opposed the measure in part on the ground that it would impose inflexible requirements on Government agencies.

The Justice Department had also asked Congress to delay action on the bill until an Administration study of ways to improve compliance with the Freedom of Information Act was completed.

The 1966 law sought to grant Americans the right of access to Federal records and specified categories of information, such as that dealing with national security, trade secrets and intra-agency memos, which could be kept secret.

The bill passed today would, among other things, set various time limits for Federal agencies to respond to public requests fo information and would require the agencies to make annual reports to Congress on how they had impleented the act

Also, the courts would b permitted to award the cost o legal fees and court costs to plaintiff seeking information i the court decision went agains the Government agency.

In addition, the bill would ex pand the definition of Federa agencies covered by the 196 law to include agencies withi the executive branch, such a the Office of Management and Budget and the National Securi ty Council and Government cor porations, such as the Tennes see Valley Authority.

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House Vote

procure the temporary or intermittent services of individual consultants or organizations thereof pursuant to section 202(1) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(1)); but this monetary limitation on the procurement of such services shall not prevent the use of such funds for any other authorized purpose. Not to exceed $388,000 of the total amount provided by this resolution (in addition to the unexpended balance of any sum heretofore made available for the expenses of the Housing Subcommittee of the Committee on Banking and Currency) shall be made available for the expenses of the Housing Subcommittee of the Committee on Banking and Currency in accordance with this resolution which shall be paid on vouchers authorized by such subcommittee, signed by the chairman of such subcommittee or the chairman of the committee, Administration.

SEC. 2. No part of the funds authorized by this resolution shall be available for expenditure in connection with the study or investigation of any subject which is being investigated for the same purpose by any other committee of the House, and the chairman of the Committee on Banking and Currency shall furnish the Committee on House Administration information with respect to any study or investigation intended to be financed from such funds.

SEC. 3. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration under existing law.

Mr. THOMPSON of New Jersey (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the resolution be dispensed with and that it be printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. THOMPSON of New Jersey. Mr. Speaker, House Resolution 800 represents the funding resolution for the Committee on Banking and Currency. It has been agreed upon by the majority and the minority, and represents a modest increase of $8,000 more than in the first session.

(Mr. THOMPSON of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of New Jersey. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 12471, FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. MATSUNAGA. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 977 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 977

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Hawaii (Mr. MATSUNAGA), is recognized for 1 hour.

Mr. MATSUNAGA. Mr. Speaker, I yield 30 minutes to the gentleman from California, Mr. DEL CLAWSON, pending which I yield myself such time as I may consume.

(Mr. MATSUNAGA asked and was given permission to revise and extend his remarks.)

Mr. MATSUNAGA. Mr. Speaker, House Resolution 977 provides for consideration of H.R. 12471, which, as reported by our Committee on Government Operations, would strengthen the procedural aspects of the Freedom of Information Act by amendments to that act. The major amendments would accomplish the following: First, clarify language in the act regarding the authority of the courts, relative to their de novo determination of the matter, to examine the content of records alleged to be exempt from disclosure under any of the exemptions in section 552(b) of the code; second, amend language pertaining to national defense and foreign policy matters, in order to bring that exemption within the scope of matters subject to an in camera review; and third, add a new section to the act to provide for mechanism to strengthen congressional oversight in the administration of the act by requiring annual reports to House and Senate committees on requests and denials of requests for information.

Mr. Speaker, House Resolution 977 provides for 1 hour of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, after which the bill would be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the committee would rise and report the bill to the House with such amendments as may have been adopted. The previous question shall then be considered as ordered on the bill and amendments thereto to final passage, without any intervening motion except one motion to recommit.

The committee report estimates that costs required by the bill should not exceed $50,000 in fiscal year 1974 and $100,000 for each of the succeeding five fiscal years.

Mr. Speaker, H.R. 12471 represents the first changes recommended to the Freedom of Information Act since that landmark law was enacted by this Congress in 1966. The changes and clarifications proposed in this bill are modifications recommended by a unanimous vote of the Government Operations Committee. Its members in their wisdom, have clearly determined that a pressing need exists to lift the secrecy which continues to shroud our Federal agencies. The aim of this measure is to correct the dangerous inadequacies revealed by thorough investigative hearings conducted by the committee's Foreign Operations and Government Information Subcommittee during 1972, as well as through frustrating personal experiences of many in this hall in their dealings with Federal agencies.

Many of the proposed amendments are procedural in nature yet crucial to the intended purposes of the act. The amendments would improve the currently confusing and inadequate indexes of information now available in some agencies. It would correct the procedures for identification of records required by the act. It would require prompt agency responses to requests and provide for reasonable legal cost incurred by aggrieved plaintiffs who are refused mandated agency action on their legitimate requests. This provision would help cover their actions in Federal court to compel uncooperative agencies to release information which properly should be open to public inspection.

There are three more substantive provisions in the bill which warrant our full deliberation. One provision would clarify existing language regarding the authority of the courts to examine the content of agency records alleged by their custodians to be exempt from disclosure under section 552(b) of the code. Another provision would permit in camera review by the courts of matters pertaining to national defense and foreign policy, as defined by criteria established by Executive order. This will permit such matters to be included with the existing provision in the act which currently allow in camera review in nine delineated areas. I refer to section 552(b) of the code.

The third major provision would strenthen the mechanism for congressional oversight in the administering of the act. This amendment would require the filing of annual reports by the agencies to House and Senate committees. These reports would delineate statistical data and other information on denials of requests under the act, administrative appeals of denials, rules promulgated by the agencies, and fee schedules and funds collected for searches and reproduction of requested information.

Mr. Speaker, the purpose of this bill is to insure that the people's right to know what their Government is doing will be protected and that their access to legitimate information will be unimpeded. The Freedom of Information Act was intended to help make the democratic process work by assuring that the conduct of Government in our republic would remain open for all to view, except where genuine national security and foreign policy concerns would be jeopardized. The intent was, and is, to assure that our people will remain an informed and enlightened citizenry.

Experience has taught us, however, that the scope of this legitimate shield which was provided by the act could be stretched to suit particular partisan or personal purposes. It could be extended to veil matters unfavorable to the cus-

todian agency or embarassing to the officials therein.

What this bill would do is require those agencies which have resisted proper public scrutiny to produce to a Federal judge valid reasons based on compelling national security and foreign policy interests explaining why the American people should not know of the agency's activities or policies. All of this would be done in the strictest secrecy in the closed chambers of a Federal judge. Those agencies which claim the need for secrecy will have their confidentiality safeguarded, unless, of course, the court finds their claim unreasonable. The public, including the press and the Congress, will be assured that the determination of what should be kept secret will be decided by an impartial party, not by the whim of an overly protective bureaucrat or agency official who may, under the present law, cast the cloak of national security over every detail of agency business. The bill, in brief, provides for the fullest measure of protection for legitimate Government secrets while allowing for disclosure of that which the public is entitled to know.

Mr. Speaker, as a cosponsor of this measure and of the original act, I firmly believe that this bill, the product of months of intensive investigation and review by the respected members of the Government Operations Committee, offers a sensible and workable compromise between the requirements of a democratic Government and the appropriate needs of Government and national security.

I congratulate the most distinguished chairman of the committee, my dear friend and colleague from California, CHET HOLIFIELD, and the hard-working principal sponsor of this bill, my respected colleague, BILL MOORHEAD, for their reasoned approach to this vital legislation.

Mr. Speaker, I urge the adoption of House Resolution 977 in order that H.R. 12471 may be considered and passed overwhelmingly.

Mr. DEL CLAWSON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. DEL CLAWSON asked and was given permission to revise and extend his remarks.)

Mr. DEL CLAWSON. Mr. Speaker, the gentleman from Hawaii (Mr. MATSUNAGA) has explained the bill thoroughly, also the resolution, but let me just summarize very quickly:

Mr. Speaker, House Resolution 977 is the rule providing for consideration of H.R. 12471, the Freedom of Information Act Amendments. This is an open rule with 1 hour of general debate.

The purpose of H.R. 12471 is to provide easier access to Government documents for the public.

The bill sets rigid time limits on the agencies for responding to information requests, shortens substantially the time for the Government to file its pleadings in Information Act suits, and authorizes the award of attorney's fees to successful plaintiffs in such suits. In addition, each agency is required to submit an annual report to Congress evaluating its performance in administering the act and "agency" is defined to include the Executive Office of the President.

The committee report estimates the cost of this bill at $50,000 for the remainder of fiscal year 1974, and $100,000 for each of the succeeding five fiscal years.

Mr. Speaker, I urge the adoption of this rule in order that the House may begin debate on H.R. 12471.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. MATSUNAGA. Mr. Speaker, I have no requests for time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill that we are about to consider, H.R. 12471(to amend the Freedom of Information Act:

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. MOORHEAD of Pennsylvania, Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

The SPEAKER. The question is on the motion offered by the gentleman from Pennsylvania (Mr. MOORHEAD).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 12471, with Mr. ECKHARDT in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Pennsylvania (Mr. MOORHEAD) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. ERLENBORN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MOORHEAD of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I will be brief in my remarks explaining the bill, which has the bipartisan support of the membership of our committee and which was reported unanimously by the Government Operations Committee last month.

H.R. 12471 is a bill to insure the right of the public to ask for and receive information about what their Government is doing. It contains amendments, essentially procedural in nature, to the Freedom of Information Act, for the most part setting ground rules by which the Federal agencies must respond to inquiries from the public.

The major substantive provision of this bill clarifies the original intent of Congress that executive agency decisions to withhold information from the public may be reviewed by the judicial branch of Government.

H.R. 12471 is the result of over 2 years of investigative and legislative hearings by the Foreign Operations and Government Information Subcommittee. It represents the first overhaul of the Freedom of Information Act since its original enactment in 1966. That milestone law guarantees the right of persons to know about the business of their Government, subject to nine categories of exemptions whose invocation is, in most cases, optional.

At the time the original Freedom of Information Act was passed by the Congress in 1966, it was recognized that continual oversight by the Committee on Government Operations would probably result in the recognition that amendments would be needed in the future. In 1972, the Foreign Operations and Government Information Subcommittee commenced extensive investigative hearings resulting in the unanimous adoption by the Government Operations Committee of House Report 92-1419 in September 1972. That report contained both administrative and legislative recommendations.

As a result of many days of hearings and more days of markup, H.R. 12471, cosponsored by all but one member of the subcommittee, was introduced as a clean bill, was voted out favorably by the subcommittee by a vote of 8 to 0, and was unanimously reported by the full committee.

H.R. 12471 is mostly procedural in nature and is designed to strengthen the operation of Federal information policies and practices. Essentially, the bill seeks to do this by seven amendments which, by the time the subcommittee had worked its will, should be, and were in the committee nonpartisan and noncontroversial insofar as Members of Congress are concerned:

The amendments are as follows:

Amendment No. 1—Section (a) Indexes:

Requires agencies to publish indexes of important actions taken by them to make such actions more readily available to the public.

Amendment No. 2—Section 1(b) Identifiable records:

Eases the technical burden on the public by changing the words of the public request from "for identifiable records" to a request which "reasonably describes such records."

Amendment No. 3—Section 1(c) 7 Time limits:

Sets a fixed time of 10 working days for response, 20 working days for administrative appeal and 20 days for a responsive pleading to a complaint in a district court.

Amendment No. 4—Section 1(e) Attorney fees and court costs:

Allows the court at its discretion to award reasonable attorney fees and costs to plaintiffs who prevail in freedom of information litigation.

Amendment No. 5 —really two amendments—Section 1(d) and section 2, Court review:

Would, among other things, overrule the Supreme Court decision in EPA against Mink, by first making it clear that a court may review records in camera and,

Second, authorizing a court to look behind a security classification label to see if a record deserved classification under the "criteria" of an Executive order.

Amendment No. 6—Section 37 Reports to Congress:

Requires affected agencies to submit annual reports to the appropriate committees of the Congress on their freedom of information activities.

Amendment No, 7—Section 37 Definition of "agency":

Expands the definition of agency for the purposes of the Freedom of Information Act to include the Executive Office of the President, Government corporations, and Government controlled corporations, as well as those establishments already recognized as Federal agencies.

The amendments to the Freedom of Information Act provided for in H.R. 12471 would take effect 90 days after enactment.

Mr. Chairman, I want to stress again the bipartisan nature of and support for this bill. It is a carefully drafted piece of legislation which I feel strikes the proper balance between efficient Government operations and the public's "right to know."

This bill has been unanimously approved by the Foreign Operations and Government Information Subcommittee and the full Government Operations Committee and merits the support of this House.

Mr. VAN DEERLIN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to my friend, the gentleman from California (Mr. VAN DEERLIN).

Mr. VAN DEERLIN. Mr. Chairman, I am one of an overwhelming majority of this House who will be in support of the legislation before us this afternoon. I will confess to some sense of trouble over the portion of the bill to which the able subcommittee chairman has just referred, the definition of agencies and organizations to be affected by the amendments.

The reference to Government-controlled corporations in the legislation itself raises no red flags. I am, however, troubled by the report accompanying the bill which reads on page 8 as follows:

The town "Government controlled corporation," as used in this subsection, would include a corporation which is *not* owned by the Federal Government, such as the National Railroad Passenger Corporation (Amtrak) and the Corporation for Public Broadcasting (CPB).

The Corporation for Public Broadcasting, as the gentleman knows, was created by Congress as a means of pumping Federal money into broadcasting without having Federal control over broadcasting. It seems to me that this arrangement very happily met the first amendment requirements for this type of organization. We wanted to find some way of providing Federal assistance to educational and public broadcasting needs—which includes the coverage of public events and often political subjects. There have been ongoing efforts to find a means of financing this organization which would keep Congress, which would keep the executive branch, and which would keep politicians at any level out of policymaking in public broadcasting.

I think that this administration, while it was chided by our Committee on Interstate and Foreign Commerce many times for what we thought was its slowness in coming up with long-range financing plans, did act in good faith and out of the same sense of responsibility we all felt in Congress for maintainnig the independence of this very sensitive broadcasting operation.

This was by no means intended to be a Government information agency or a Government broadcasting agency. I know the gentleman in the well feels as strongly as I do the necessity of protecting the Corporation for Public Broadcasting against the intrusion of political action.

Would the chairman be kind enough to comment on this phase of the legislation?

Mr. MOORHEAD of Pennsylvania. I would say to the gentleman that if in fact of law the Public Broadcasting Corporation is not a Government-controlled corporation, then the words of the statute and not the words of the report would control. I would also say to the gentleman that this is not a bill to provide Government access to information but it is for the people, the individual citizens across this country. I think the language of the statute would control over the language of the report.

Mr. VAN DEERLIN. If the gentleman will yield further, the right of the individual inquiry is backed up by the majesty of Government through this legislation. Where it would concern an organization such as Amtrak, I would say hooray.

But I do raise the question in regard to the CPB, and I am glad for the opportunity the chairman of the subcommittee has provided to make legislative history on this. In my opinion there would never be a question on which the Corporation for Public Broadcasting would seek to hide information. They have always testified freely before both our committee and the Committee on Appropriations, but I think we must be ever mindful of the necessity for guarding a sensitive agency such as this against political inquiry.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield to the gentleman from Texas.

Mr. WHITE. Mr. Chairman, I appreciate the gentleman yielding to me. On page 4 of the bill, the bill does recite that on or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year, and then names the specific committees to receive the reports.

I wanted to advise the gentleman that I intend to offer an amendment that in accordance with rule XXIV of the House the submission of reports would be to the Speaker of the House and to the Presidnt of the Senate, who would then submit it to the appropriate committees.

Would the gentleman have any objection to the submission?

Mr. MOORHEAD of Pennsylavnia. At first blush, I would not. I would like to submit it to my colleague on the other side of the aisle.

I want to stress again the bipartisan noncontroversial nature of this legislation. It had unanimous approval of the subcommittee and the full committee. I urge its adoption.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. Can the gentleman yield on his own time?

Mr. ERLENBORN. I wanted to know if the gentleman would yield for a question.

Mr. MOORHEAD of Pennsylvania. Of course, I yield to the gentleman.

Mr. ERLENBORN. The question has been asked by Members on this side of the aisle as to the meaning of two definitions of agencies to include the Executive Office of the President.

I want to ask the gentleman if it is not correct, as it states in the report of the committee, that the term "establishment in the Executive Office of the President" as it is contained in this bill means functional entities, such as the Office of Telecommunications Policy, the Office of Manager of the Budget, the Council of Economic Advisers and so forth; that it does not mean the public has a right to run through the private papers of the President himself?

Mr. MOORHEAD of Pennsylvania. No, definitely not. I think the report is crystal clear on that. I thank the gentleman for bringing it up.

Mr. ROUSSELOT. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman.

Mr. ROUSSELOT. I thank the gentleman for yielding. Does this legislation mean that foreign governments or individuals from foreign governments will have the same kind of access as any American citizen, or is it just limited to American citizens?

I am referring especially in the case where an individual has to go to a court suit.

Mr. MOORHEAD of Pennsylvania. The legislation says any person; that would exclude foreign governments.

Mr. ROUSSELOT. What about a foreign ambassador or a foreign alien, say the Russian Ambassador?

Mr. MOORHEAD of Pennsylvania. I

would think if he had standing in a court as an individual, not as an ambassador, that he would have the same rights in connection with this; subject, of course, to the limitations provided in the original act.

Mr. ROUSSELOT. So the interpretation of the gentleman would be that foreign citizens residing here could, in fact, have the same kind of access to Government agencies as a U.S. citizen.

Mr. MOORHEAD of Pennsylvania. Whatever the situation, I would say to the gentleman from California it is not changed by the legislation before us. He would have to go back to the original 1966 act to determine that, but we are not changing that. We are not increasing the coverage of the bill to additional people.

Mr. ROUSSELOT. Except in this legislation we say that "the court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section."

So, in fact, foreign citizens and aliens, I was thinking particularly of alien groups that reside here, if they would decide to go to court and the court could, in fact, assess the U.S. Government for their legal fees.

Mr. MOORHEAD of Pennsylvania. Of course, it is conceivable; but first the plaintiff has to prevail, and even if he prevailed, the courts will grant it only at their discretion.

Mr. ROUSSELOT. But it is clearly possible the way the courts are today, they are very lenient with our money. I wondered if this is not a possible flaw in this legislation.

Mr. MOORHEAD of Pennsylvania. I think this section is important because there is often no monetary involvement in this field of litigation and it does discourage individuals from bringing suits.

Mr. ROUSSELOT. Except it says the court may assess against the United States for attorney fees.

So, it is another form of legal fee at the expense of the U.S. Treasury.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I might point out to the gentleman that in this kind of litigation, the plaintiff gets no monetary award from winning the case. He is serving all of the people by making Government more open if he prevails.

Mr. ROUSSELOT. Except that he may keep it in court by trying to pursuade the judge or the court itself to pay his fees.

Mr. MOORHEAD of Pennsylvania. Only, I say to the gentleman, if the court finds the Government has improperly withheld material.

Mr. ROUSSELOT. Mr. Chairman I appreciate the gentleman's comments.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield to the gentleman from California.

Mr. MOSS. Mr. Chairman, I was merely going to make the point that in order for such a person to prevail, the original withholding would have had to have been an improper act, or otherwise he could not prevail.

Mr. ROUSSELOT. Mr. Chairman, where does the language say that?

Mr. MOSS. The original act is to prevent the improper withholding.

Mr. ROUSSELOT. But where in this is it?

Mr. MOSS. The court here examines in camera and determines whether or not the information meets the test for privilege or whether it is going to be released.

Mr. ROUSSELOT. But the court has the real decisionmaking power to decide?

Mr. MOSS. The court has the decisionmaking power.

Mr. ROUSSELOT. It is not necessarily what the agency feels and/or the Congress; it is the court.

Mr. MOSS. It is the court, because it is a matter that is being tried in the courts in this case.

Mr. ROUSSELOT. Well, my concern is in the case of aliens and foreign people and others who have all kinds of reasons to try to attack agencies of our Federal Government. This appears to me to be a substantial loophole, if you will, in the legislation, for them to get free court costs. That is my only concern.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I would say to the gentleman that in the 7-year history of the act, we know of no case where an alien or foreign official has brought action. It could be brought under existing law, and it is not changed by this bill.

Mr. ROUSSELOT. However existing law does not provide for the court to assess the U.S. Government, does it. Does the present law provide for this?

So, this is really new law on the books, and that was my point.

Mr. MOORHEAD of Pennsylvania. Of course, it is new law.

Mr. ROUSSELOT. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The chair recognizes the gentleman from Illinois (Mr. ERLENBORN).

Mr. ERLENBORN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. Mr. Chairman, I yield to the gentleman from New York.

Mr. HORTON. Mr. Chairman, I want to commend the gentleman in the well, the gentleman from Illinois (Mr. ERLENBORN) and the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. MOORHEAD) for their leadership in bringing this bill to the floor. I am one of the sponsors of the bill, and I certainly hope that the House will enact this legislation.

Mr. Chairman, I rise in support of H.R. 12471, a bill to strengthen the people's right to be informed of their Government's activities. Our form of government—in fact the foundations of our society—rest on an informed citizenry. Nothing could be more essential than measures like the one before us now to the safeguarding of our democratic ideals.

As the ranking minority member of the Committee on Government Operations, I am very fortunate to have participated in writing laws in this area. Eight years ago, I voted in favor of the original Freedom of Information Act. For 5 years, I served on the Foreign Operations and Government Information Subcommittee, which investigated the performance of Federal agencies under the act. Last February, I introduced, along with several of my colleagues on the committee, a bill to improve the administration of this law. And today, I will vote for a measure which fulfills that same objective.

Almost every provision of H.R. 12471 is similar, if not identical, to a provision of H.R. 4960, the bill I sponsored and testified upon before the subcommittee. I am happy to see these points in the legislation we are now considering.

This measure requires agencies to perform many functions which will directly aid citizens in obtaining Government documents. It stipulates that agencies publish indexes of their material, respond to requests that reasonably describe records and decide whether to comply with those requests within specific periods of time. The bill also imposes several obligations which will indirectly assist individuals. Under H.R. 12471, courts could review agency classification of material which was allegedly made for national security reasons and could force the Government to pay attorney fees and other litigation costs in suits where the Government does not prevail. Agencies would have to respond to court suits quickly and report to congressional committees annually on how they fulfilled their responsibilities under the Freedom of Information Act.

Mr. Chairman, all these changes in the law will advance the people's right to know what their Government is doing. I comment their enactment to all Members.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. Mr. Chairman, I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I would ask that the gentleman from Illinois, during his comments, might give some specific comments concerning page 7 of the report, the paragraph entitled, "National Defense and Foreign Policy Exemption," which refers to the language on page 5 of the bill. This is the concern I have, and I would appreciate very much a discussion of that subject.

Mr. ERLENBORN. Mr. Chairman, I will be happy to do that, and I will be happy to answer any further questions the gentleman from Florida may have.

Mr. Chairman, I am happy to join with the chairman of the Foreign Operations and Government Information Subcommittee, Mr. MOORHEAD of Pennsylvania, in advocating H.R. 12471.

This bill would amend the Freedom of

Information Act in several ways, all designed to ease the public's access to Government documents. It is the product of bipartisan effort by our subcommittee. We began our consideration of the Freedom of Information Act with two bills, one by Mr. MOORHEAD and one by Mr. HORTON—the ranking minority member of the Government Operations Committee—and myself. H.R. 12471 combines features of both those measures and has the unanimous support of both the Foreign Operations and Government Information Subcommittee and the full Government Operations Committee.

Mr. Chairman, the Freedom of Information Act became law on July 4, 1966, and took effect exactly 1 year later. I am proud to have played a part in securing its passage in the House, along with the gentleman from California (Mr. Moss) and our former colleague from Illinois, Don Rumsfeld. The act's guiding principle is that public access to Government information should be the rule, to be violated only in the specific areas which Congress believes are in the national interest to exempt.

In the few years that the act has been in existence, the executive branch of Government has become far more open to citizens of this country. Government officials and employees are to be congratulated for generally adopting attitudes which are in conformity with the act, but very different from the previous policy of nondisclosure.

The record of compliance with the law has not been perfect, however. In extensive investigative hearings over the past 3 years, our subcommittee has discovered many instances of failure to respond to the dictates of this act and many efforts to frustrate them by delaying release of public material.

The bill before us now is intended to remedy problems we have found.

Some individuals have experienced difficulty in learning what types of documents are in the files of various agencies. Section (1)(a) of H.R. 12471 requires agencies to publish their indexes of materials.

Some citizens have had requests for information denied on the grounds that they did not identify precisely the documents they wanted. The act was meant to require individuals to describe records reasonably, not identify them by specific number. Section (1)(b) makes this original intent clear.

Some people have had to wait excessive periods of time for responses to their requests. Section (1)(c) requires agencies to live up to the spirit, as well as the letter, of disclosure by answering requests promptly.

The Supreme Court has held that courts may not permit citizens to view matters which have been classified for reasons of national defense or foreign policy, and that courts may not examine those documents to see whether they have been properly classified. Sections (1)(d) and (2) of H.R. 12471, taken together, permit courts to examine material in chambers and determine whether it truly falls within the exemption for national defense or foreign policy classified matter. This change should persuade agencies to consider more carefully whether to classify material.

In addition, H.R. 12471 mandates that the Government respond quickly to complaints filed under this act and, at the discretion of courts, pay attorney fees and other litigation costs incurred by victorious plaintiffs. The measure also establishes that agencies shall report annually to the Congress on their performance under the act. All these provisions are designed to stimulate agencies to comply more completely and promptly with the law, and on close questions, to decide in favor of disclosure of information to the public.

Before closing, I would like to comment about an omission in H.R. 12471. H.R. 4960, which Mr. HORTON and I introduced and on which the subcommittee held hearings, included a title establishing an independent Freedom of Information Commission.

Our belief was that the existence of the Commission, authorized to review negative responses to information requests, would have been an incentive for positive agency responses. With authority to examine classified material, the Commission could have relieved judges of the burden of in camera inspection of information. Although the Commission's rulings would have been advisory rather than mandatory, its rulings would have constituted prima facie evidence of improper withholding of records. Thus, we anticipate fewer FOI cases would end up in the courts.

The decision not to establish a commission does not render H.R. 12471 defective. We can establish such a commission at a later time, if need be. I mention it only to serve notice that we are serious about making the Freedom of Information Act work.

Mr. Chairman, all the changes which the bill before us makes in procedures of the Freedom of Information Act are beneficial. They will lead, I believe, to fuller and timelier sharing of information by the Government with the people of this country. The objective is worthy, and the means of achieving it are fair. I urge approval of this bill.

Mr. ARCHER. Will the gentleman yield?

Mr. ERLENBORN. I will be happy to yield to the gentleman.

Mr. ARCHER. Do I correctly understand this legislation is to require the prompt distribution to any individual in this country by sale or otherwise of Government documents that are not otherwise classified as being in the national security? Is that basically correct?

Mr. ERLENBORN. Yes. That is basically correct. The present law requires that. The Freedom of Information Act on the books requires that, with certain exemptions that are spelled out in the act.

Mr. ARCHER. There is one existing practice that troubles me already. I wonder if this bill would increase that, that is, the sale by the Federal Government of a list of names that they accumulate which are then used by the purchaser for the purpose of solicitation or mass mailings or harassment of some nature or another. I have legislation that I have introduced which would prohibit the Federal Government from selling these lists of names to various people in this country. I wonder what this act does about it.

Mr. ERLENBORN. We considered that problem in the subcommittee and we had testimony from interested individuals as well as the agencies involved. I must confess to the gentleman that we found it difficult to resolve the problem to everyone's satisfaction and, therefore, it is not included here in this legislation.

I am sensitive to the problem, as is the gentleman from New York (Mr. HORTON) who has also introduced legislation similar to that to which the gentleman refers. As an example, I understand that the Department of the Treasury has made available the names of all those who are listed as collectors of or dealers in guns and weapons, which made it possible for those with sticky fingers and the ability to break into a person's home to find out where such weapons might be available, where they could identify people who were collectors of guns. It was not the intent of the act, and I hope we find a way of resolving that problem.

Mr. YOUNG of Florida. Will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman.

Mr. YOUNG of Florida. I thank the gentleman for yielding.

On the point I had orginally raised, the language of the report on page 7 seems to me to give the court the privilege to examine now in camera any information or documents that might be relevant to the national defense. It is a change from the existing law. That is new law, then.

Mr. ERLENBORN. Yes. That is one of the purposes of this bill; namely, to change existing law in this respect. It is the result of the decision in the Mink case mentioned by the chairman of the subcommittee, Mr. MOORHEAD. In that case the Supreme Court, said that the courts were not invested with authority to go behind the stamped document. Therefore, the decision of any person in the executive branch who puts a stamp of "secret" or "classified" or whatever it might be on a document could not be reviewed by the Court. It is clearly the intention of the committee to make these documents subject to inspection in camera and in chambers, not in public, by the judge, who can then decide as to whether the classification is proper under the Executive order authorizing such classification.

Mr. YOUNG of Florida. Will the gentleman yield further?

Mr. ERLENBORN. I yield to the gentleman.

Mr. YOUNG of Florida. I have a serious concern about that very point, and I wonder if the gentleman will respond to this question. Just what is it that makes the judge an expert in the field and one who would have sufficient knowledge so that he can make a determination as to what is or is not to be made available and what should be prohibited from public distribution?

Mr. ERLENBORN. The only way I can

answer the gentleman is it is the same thing that makes judges experts in the field of patent law and copyright law or all of the other laws on which they have to pass judgment. There are no specific qualifications for a judge in these areas; a judge is a judge. I have the same concern as the gentleman has. That is why I recommended, along with Mr. HORTON, the creation of the Freedom of Information Commission which could develop expertise in this area and act as a master in chancery or an adviser to the court. I expect, as I said in my prepared remarks today, that after we have some experience under this new provision others may agree that we need a Freedom of Information Commission.

Mr. YOUNG of Florida. Will the gentleman yield further?

Mr. ERLENBORN. I yield to the gentleman.

Mr. YOUNG of Florida. Let me respond to the gentleman's statement by saying that in the cases you mentioned the judge does have written law and precedents on which to base a decision, but in the case of classification and in the case of making the decision of whether a matter is relevant to national defense and national security he does not have this basis on which to make such a decision.

Mr. YOUNG of Florida. Mr. Chairman, I still think that insofar as the international community is concerned, that perhaps the judge might consider something to be unimportant to a possible potential enemy whereas it might be very, very important to that potential enemy, and where the judge has no special background or expertise to be able to make a reasonable judgment in that regard.

Mr. ERLENBORN. The gentleman is accurate in saying that there is no law that establishes the criteria. We learned as a result of the Ellsberg case that there is no official secrets act in this country, even though in other countries, England, for one, there are. Therefore, what we operate under in the field of classification is the Executive order. We have an amendment in this bill to paragraph 1 of the list of exemptions so as to read as follows:

(1) authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy

This will give direct attention of the court to the Executive order rather than the law, since we have none. The Executive order that establishes the criteria in such an instance would be used by the court to pass judgment on whether the criteria in the Executive order has been made by some flunky in the Department of Defense, and who has improperly classified such document.

Mr. YOUNG of Florida. Mr. Chairman, if the gentleman will yield further, I have one more question.

Mr. ERLENBORN. I am happy to yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I want to compliment the gentleman in the well and the leadership of the committee for the work that they have done in bringing out the Freedom of Information Act amendments, freedom of information is something which I do agree with very, very strongly. I believe that our people have the right to know what the Government is doing, or is not doing. But again I must register my objection, and my strong concern about this particular matter as it relates to our national defense, and as to who might be making important decisions relative to our national security matters.

Mr. McCLOSKEY. Mr. Chairman, if the gentleman will yield, just by way of responding to the inquiries of the gentleman from Florida (Mr. YOUNG), because I believe this matter is one that should be made clear insofar as the legislative history is concerned: The framework of the committee's consideration of this bill was against the recent decision in the Sirica case, where the Circuit Court of Appeals in the District of Columbia did provide for in camera inspection of documents upon which the President claimed executive privilege. I think it is clear from the language in that decision that the court was prepared to bend over backward to honor the executive claims of privilege; in fact, the import in that decision was that only if the need for such revelation of the information to the grand jury outweighed the national interest in protecting the information would the court order that it be disclosed to the grand jury in that case. And all of the other decisions which we have before us in this field indicate the great reluctance of the court to overrule a contention that the national security interests are paramount. And we pass this into law with the confidence that any court will examine very closely the matter of national security interest as against a citizen seeking disclosure of information, and that the court is going to be very reluctant to override an administrative decision which exists in the mind of the administration relative to declassification of such information. And what we have done in this bill, I think, reaches a compromise that the committee has in the language of this bill that, insofar as the safeguards of our national security are concerned, that should not alone be the single criteria that would compel a court not to override such an Executive order supposedly only because of national security.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman from California (Mr. McCLOSKEY) for his contribution, and I agree with what the gentleman has said. There will certainly be a strong presumption in favor of declassification. I say this because of the testimony before our committee which indicated that the power to classify has been abused considerably by various agencies of this Government.

As I say, we had plenty of testimony that would lead us to believe that documents have been improperly classified in the first place and, second, not declassified within a reasonable period of time.

As an historical example, there is the so-called Operation Keelhaul in which documents have been kept secret for 25 or 30 years, and which still are classified, to keep information from the public about what apparently was a very black day in the history of the United States. We really do not know why the secrecy has been kept, even though there have been attempts by historians to get at them. The documents relate to events which occurred in 1946, immediately after World War II. The fact that they are still classified, raises questions in one's mind as to whether they are properly classified and should still be kept from the public today, in 1974.

Mr. YOUNG of Florida. I do not deny that at all. There are classifications that probably have been the result of someone being overly cautious in their classification. I would make the point though that if we are going to make a mistake, it might be better to consider making that mistake in the interest of a strong national security.

The second point, in response to the gentleman from California, I recognize the attempts of impartiality of the courts, and I believe that from the standpoint of their sincerity they certainly could be trusted with this program. But I am also aware, as is he, of the vast numbers of unauthorized leaks of information, leaks in fact that are contrary to the law that have come from some of these courts that the gentleman has mentioned.

Mr. Chairman, I rise in opposition to H.R. 12471, amending the Freedom of Information Act of 1966. I am certainly not opposed to the principle of streamlining the act through certain procedural changes, but I have grave reservations over the contents of one change which strikes at the heart of our national security.

My record in support of freedom of information cannot be challenged. As a Florida State Senator, I was one of the primary supporters of Florida's landmark "Government in the Sunshine" law. Since coming to Congress, my legislative activities have included legislation to open House committee meetings to the public, and H.R. 1291, a bill to amend the Freedom of Information Act to require public disclosure of records by recipients of Federal grants. My bill requires that a willingness to provide full public disclosure be made a condition to receiving a Federal grant; that complete records must be kept on how these funds are spent; and that refusal to make these records public will result in the grant being withdrawn.

I support the bill before us today in its efforts to speed public access to agency information and to require agencies to provide this information in a timely fashion. These procedural changes would be helpful in carrying out the intent of the original act.

However, section 552(b)(1) of the United States Code clearly states that the Freedom of Information Act does not apply to matters that are specifically required by Executive order to be kept secret in the interest of national defense or foreign policy. This is the first of nine specific exemptions from the provisions of the act.

My distinguished colleagues of the Government Operations Committee, however, have included in their so-called procedural amendments a change in the language of section 552(b)(1) which

could effectively negate our national security classification system. Taken in conjunction with language elsewhere in the bill, it permits the courts to examine in camera the contents of agency records to determine if a national security exemption has been properly applied.

This is a specific grant of authority to the courts to second-guess security classifications made pursuant to an Executive order and thus constitutes a clear threat to our national defense. As the Justice Department noted in their report to the Congress on this legislation:

> No system of security classification can work satisfactorily if judges are going to substitute their interpretation of what should be given a security classification for those of the government officials responsible for the program requiring classification.

My distinguished colleague from Illinois, the ranking minority member of the Government Operations Committee, Congressman ERLENBORN, himself has admitted in our colloquy earlier today:

> That there will certainly be a strong presumption in favor of declassification.

This does not bode well for top secret documents on our national defense or foreign policy should some judge decide it would be more in the interest of the Nation to make them available to the world.

Both my distinguished colleague from Illinois and my colleague from California (Mr. MCCLOSKEY) have pointed out some of the defects of the existing classification system, especially with regard to older defense materials. To which I would respond that these defects have already been recognized and an accelerated effort put underway to remedy them.

In Executive Order 11652, dated March 8, 1972, President Nixon not only recognized the problems of overclassification and the denial to historians and other interested parties of decades-old war records and foreign policy documents, he ordered the implementation of an accelerated declassification program. Since that time, the National Archives and Record Service has sifted through close to 100 million documents and reclassified most of them so that they are available to the public. According to the President's timetable, anything over a certain age is automatically declassified; other documents of a later date are subject to review. Eventually, anything over 6 years of age will be subject to automatic review and declassification unless the classifying agency can prove that the materials still fall under the national security aegis.

Therefore, because this procedure is now in effect, it is clear that the thrust of the committee amendment is against current defense and foreign policy secrets.

Mr. Chairman, I do not believe that the American people want a judge to decide what national defense and foreign policy information should be publicized. In the Sixth Congressional District of Florida which I have the privilege of representing in Congress, 86.2 percent of those responding to my March 1972 congressional questionnaire stated that they did not believe that the news media should have the right to publish or broadcast secret Government information dealing with national security.

As a former member of the House Armed Services Committee and as one who has long been concerned over the erosion of our national defense and national security standards, I cannot stand by and see this legislation breeze through the House without drawing attention to its one glaring defect. Mr. Chairman, with this exception, I support the legislation and its purposes, but will vote against it on final passage to register my concern over the weakening of our national security, and hope that our colleagues in the other body will eliminate this invidious provision so that I can enthusasitically support the bill in its final form.

Mr. ERLENBORN. I thank the gentleman for his comments.

I now yield to the gentleman from Nebraska (Mr. THONE).

Mr. THONE. I thank the gentleman for yielding.

(Mr. THONE asked and was given permission to revise and extend his remarks.)

Mr. THONE. Mr. Chairman, having assisted in the authorship of an open records bill in Nebraska and the open meetings law we have in that State, and the partially open court law, I strongly endorse the legislation.

Mr. Chairman, I rise in support of H.R. 12471, a bill of which I am proud to be a cosponsor.

For many years, I have advocated openness in Government. We must make certain the public's business is conducted in public. Before I came to Congress, I helped to draft and worked for passage of Nebraska's open meetings and open records laws. As a member of the Foreign Operations and Government Information Subcommittee, I have been impressed with the part the Freedom of Information Act has played in making Government more accessible to the people. Our hearings last year showed, however, that there is a need for improvement of this law.

The hearings demonstrated that if there is a way that a law can be interpreted to promote secrecy and to deny the public access to public records, some Government officials will find that way. For example, the present law states that agencies must respond to any request to look at "identifiable records." Some agencies have interpreted this language so that a citizen can obtain a document only if he or she knows the precise title or the file number. To prevent such pettifoggery, we propose to amend the law so that agencies will have to respond to any request which "reasonably describes such records."

Here is another example of the bureaucratic urge for secrecy. The present law states that an agency must make nonclassified Federal records "available for public inspection by copying." Some agencies have interpreted this language to mean that a citizen can find out the language in a public document only if he comes to the agency headquarters with pencil and paper and copies what is in the record.

To correct this, the proposed language declares that with such nonclassified information, agencies shall "promptly publish and distribute—by sale or otherwise—copies."

Information is available only if it is timely. Therefore, there are several amendments to the Freedom of Information Act in the bill before you that would require the Government to act more expeditiously. If an agency is in doubt as to whether a record should be made available to the public, it must notify the person asking for the information within 10 days whether his request will be answered, and if not, the reason for the refusal. The citizen may then appeal to the head of that agency, and a reply must be forthcoming in 20 days.

We also want to correct a time element that is unfair. If a citizen sues to get access to Government records, under present law his attorney must respond to Government motions within 20 days. The Government, however, is given 60 days to reply to motions by the other side. Our bill would amend the law to put both sides on equal footing, with a 20-day limit for replying.

A recent Supreme Court decision has left a citizen with no place to turn if an agency classifies material which the citizen believes should be nonclassified. At present, courts can only determine if the mechanics of the law and Executive orders were faithfully followed in classifying a document. Our amendment would give the courts the authority to examine document in camera to determine if the information in dispute actually falls within the criteria of an Executive order.

The Federal Government has sometimes gone to great expense of litigation to deny citizen access to requested information.

On at least one or two occassions, Government officials have displayed an attitude that could be interpreted as saying to a citizen, "If you want this information, sue the Government." To make Federal officials think twice about engaging in litigation when the Government does not have a strong case, our bill would provide that the Federal Government must pay "reasonable attorney fees and other litigation costs" of citizens who win cases under the Freedom of Information Act.

One of the most beneficial amendments being proposed to this law, in my opinion, is one requiring annual reports to Congress. Each agency shall tell Congress each year how many times it has determined not to comply with requests for records, how many appeals there have been, the results of the appeals, a copy of each rule made regarding the Freedom of Information Act, and a copy of the fee schedule and the fees collected for making records available. Through these reports, we will be able to determine which agencies are responsive to the public and which are not.

I salute the gentleman from Pennsylvania (Mr. MOORHEAD), the chairman of the Foreign Operations and Government Information Subcommittee, and the gentleman from Illinois (Mr. ERLENBORN), the ranking minority member of the sub-

committee. They have carefully written amendments to the Freedom of Information Act worthy of your approval. It was a pleasure to be associated with them in producing this legislation. I urge its adoption.

Mr. ERLENBORN. I now yield to the gentleman from Virginia (Mr. PARRIS).

Mr. PARRIS. Mr. Chairman, I should like to pursue the response the gentleman made a moment ago to the inquiries from the gentleman from Florida (Mr. YOUNG). Did I understand the gentleman to say that in an in camera inspection by the court of information that the gentleman assumes hypothetically, for the purposes of this colloquy, has to do with national security, that the court in this legislation would look to the provisions of the Executive order that classifies that material under the national security exemption rather than to the material itself?

Mr. ERLENBORN. No. I am afraid the gentleman misunderstood. The amendment that we have on the bill says that the material must be classified under criteria established by the Executive order, and this is the authority for classifying the material. The court will look at the material and see whether or not it properly falls within the area established by the Executive order for classification if it fits the criteria of the Executive order, so the court would be looking to the material itself.

Mr. PARRIS. If the gentleman would yield further, let us perhaps try to draw an analogy here where some individual wants to determine some information from the Department of Defense, and the Department of Defense comes back and says under this statute, if it is law, that this particular material has some sensitive national security aspects to it. Would it then presumably not deliver that material, and the process would go on, and there would be an inspection in camera, a judicial proceeding?

Mr. ERLENBORN. Might I interrupt the gentleman at that point? Once there has been a refusal, the matter is moot unless the party seeking the information takes the next affirmative step of instituting suit.

Mr. PARRIS. I understand, and I have gone by that step. That material that has been determined by the appropriate Government agency or Government official within the Department of Defense would then presumably be delivered or made in some way available to the court for examination, so that the court itself would review the documents, or whatever the case may be, and determine that that was in fact sensitive national security information.

Mr. ERLENBORN. The court could. The court would not be required to. We say that the court may inspect in camera. That is one device that would be made available to the court. The court is not required to.

Mr. PARRIS. Would it not be a reasonable presumption that if the court is going to make an intelligent decision about the sensitivity, it is going to have to look at the material?

Mr. ERLENBORN. Not necessarily. It may be that the description of the document itself would be sufficient. If someone were asking, for instance, for the plans for a new weapons system, or something like that, it would be quite apparent on the face of the request that this material is properly classified.

Mr. McCLOSKEY. Mr. Chairman, would the gentleman yield for a supplement to that response?

Mr. ERLENBORN. I yield to the gentleman from California.

Mr. McCLOSKEY. I thank the gentleman for yielding.

Again, we examined this matter against the Sirica case decision. There the Court of Appeals ruled that if the President offered a statement to the court as to the reasons why the documents were being withheld, the court would hear arguments on those issues, and only if the arguments were not satisfactory to the court would the court then order that the documents be produced for in camera inspection. Using this authorization under criteria established by the Executive order, if that circuit court decision which remains law is followed, we would assume that the court would not order the production of the documents unless the arguments as to the documents themselves were not persuasive.

And the executive branch under the Executive order, having the power to classify matters as "Top Secret," "Secret," or "Confidential," we would assume the court would apply very strict rules before applying the in camera examination of the documents themselves.

Mr. WRIGHT. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Texas.

Mr. WRIGHT. Mr. Chairman, I thank the gentleman from Illinois for yielding, and I congratulate the gentleman in the well for his leadership as well as that shown by the chairman of our subcommittee, the gentleman from Pennsylvania (Mr. MOORHEAD) for bringing a very well constructed and very well-balanced piece of legislation before the House.

It is necessary, I think, to point out that most of the changes which this bill would make in existing law are procedural in nature but they are of considerable significance in the administration.

Mr. TREEN. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Louisiana.

Mr. TREEN. Mr. Chairman, regarding the national defense issue which the gentleman from Florida and the gentleman from Virginia have talked about, do I understand that the in-camera review by the judge would be solely for the purpose of determining whether the material had been classified consistent with the criteria or does the judge have the right to question the criteria. Before responding I would appreciate it if the gentleman will direct his attention to the language in the bill which says:

> Authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy.

My question is whether or not the judge can question whether those criteria were established in the interest of the national defense or foreign policy.

Mr. ERLENBORN. I have no hesitation in answering the gentleman that the court would not have the right to review the criteria. The court would only review the material to see if it conformed with the criteria. The description "in the interest of the national defense or foreign policy" is descriptive of the area that the criteria have been established in but does not give the court the power to review the criteria.

Mr. TREEN. I thank the gentleman.

If the gentleman will yield further, does the chairman of the subcommittee concur in that interpretation, that the criteria themselves may not be reviewed?

Mr. MOORHEAD of Pennsylvania. If the gentleman will yield, the court must accept the language of the Executive order as it was written.

Let me say to the gentleman what we were concerned about is a statement in the Supreme Court construing the Freedom of Information Act. Justice Potter Stewart said:

> Instead the Congress has built into the Freedom of Information Act an exemption that provides no means to question an Executive decision to stamp a document "Secret" however cynical, myopic or even corrupt the decision might have been.

But it is that kind of thinking of the Court which we wanted to alter.

Mr. REGULA. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Ohio.

Mr. REGULA. Mr. Chairman, I thank the gentleman for yielding. Mr. Chairman, I, too, support the amendments to the Freedom of Information Act contained in H.R. 12471. These amendments will, in my estimation, improve the administration of the act by stimulating Federal agencies to disclose more Government information to the public and to disclose it more quickly.

When we think of the Freedom of Information Act and providing access to Government information, I know that most people think in terms of affording entry to material in the city of Washington. We often forget that the Federal Government has offices in communities all around the country, and that each of these offices also maintains information which is important to many citizens. As we decentralize Government further, we will have more of these offices, and they will maintain increasing amounts of important data.

The Freedom of Information Act applies to matters which are in these local Federal offices, as well as those which are at the seat of Government. Regrettably, many officials and employees at these offices are not familiar with the provisions of the act. Requests for information made to them must often be referred to Washington, and as a result are complied with slowly, if at all. Public access to Government data is consequently frustrated not due to any malice or intent to deceive, but merely to ignorance of the law.

I sincerely hope that the various agencies covered by the Freedom of Information Act willl take the occasion of congressional consideration of amendments

to this law to educate their employees in general offices about it. Perhaps enactment of these amendments, with its consequent demands on agencies for increased speed and scope of disclosure, will effectively require agencies to make their employees outside this city aware of the FOI law.

However greater responsiveness of Federal offices to the people they serve can be achieved, I shall be happy to see it occur. I view H.R. 12471 as a means of accomplishing that goal. For that reason, as well as those cited by previous speakers, I support the bill.

Mr. Chairman, one further matter that we may look at is that these agencies are located not just in Washington, but also around the country, and these agencies ought to be accessible to the public, as well as those agencies in Washington. I think this is an important dimension of the bill.

(Mr. REGULA asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. I thank the gentleman from Ohio.

(Mr. WRIGHT asked and was given permission to revise and extend his remarks.)

Mr. WRIGHT. Mr. Chairman, our committee has worked long and hard to produce H.R. 12471 as a genuinely bipartisan measure to strengthen and to improve the operation of the Freedom of Information Act. A total of 19 days of investigative and legislative hearings were held on the act in 1972 and 1973 by our Foreign Operations and Government Information Subcommittee, under the chairmanship of the gentleman from Pennsylvania (Mr. MOORHEAD). Another 9 days of open markup sessions were held by the subcommittee during the past months to revise, improve, and refine the language of these amendments so that we could have unanimous agreement by our subcommittee and full committee members—both Republicans and Democrats.

Mr. Chairman, the freedom of information issue—dramatized so effectively by the gentleman from California (Mr. Moss) during his 16 years as chairman of this subcommittee—has never been a partisan one. The committee has been diligent in advancing and protecting the public's "right to know" during the past four administrations—two Republican and two Democratic. We have fought the Government bureaucrat's penchant for secrecy for almost 20 years in our committee and have saved the American taxpayers untold millions of dollars in the process.

The amendments to the Freedom of Information Act of 1966 that are proposed in H.R. 12471 are the first to be considered since its enactment. This is a highly technical and complex subject, and the committee has been exceedingly careful and deliberate in the amending proccss. Some may feel that we have not gone far enough. For example, the language of only one of the nine exemptions contained in section 552(b) of the act is changed at all. We felt that, by and large, the Federal courts were doing a creditable job in interpreting the language of most exemptions in a way consistent with the original intent of the Congress. The clear trend in case law under the Freedom of Information Act has been tilted toward the public's "right to know" and against Government bureaucratic secrecy, and that is the way it should be.

Although most of the amendments to the law proposed by H.R. 12471 are procedural in nature, they are nonethcless of significant importance in improving the day-to-day administration of the act. As examples, I call attention to the specific time limits provided in this bill for an agency's response to a request for information from the public. Also, the requirement that indexes of certain types of information "be published and distributed by sale or otherwise" by each Federal agency and the discretionary authority given the courts to award attorney fees and costs to plaintiffs who prevail against the Government in freedom of information litigation. Amendments relating to the court review provisions of the act likewise reaffirm the original intent of Congress in the definition of the term "de novo"; they also confirm our support of discretionary use by the courts of in camera review of contested records to clearly determine if they are properly withheld under the criteria of the exemptions set forth in section 552 (b) of the present law.

This is a meaningful and important bill, Mr. Chairman, and one which deserves the support of every Member of this body. By passing H.R. 12471 with an overwhelming vote we may begin to repair the grave erosion of public confidence in our governmental institutions that has resulted from recent Watergate scandals, secrecy, and coverup.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 5 minutes to the original author of the Freedom of Information Act, the gentleman from California (Mr. Moss).

(Mr. MOSS asked and was given permission to revise and extend his remarks.)

Mr. MOSS. Mr. Chairman, 8 years ago when the Congress passed the Freedom of Information Act without a single dissenting vote, I thought we had made it abundantly clear that the courts would have the power to examine classified documents in camera and determine whether they had been properly classified.

The criteria for each classification—confidential, secret, and top secret—had been set forth clearly in an Executive order by the President. Either a classified document meets the test of the criteria or it does not. It is just that simple.

It does not require an Einstein. What it does require is some intelligence, sensitivity, commonsense, and an appreciation for the right of the people to know what their Government is doing and why. I have confidence our judges have these qualities.

I do not think we have to make dummies out of them by insisting they accept without question an affidavit from some bureaucrat—anxious to protect his decisions whether they be good or bad—that a particular document was properly classified and should remain secret. No bureaucrat is going to admit he might have made a mistake.

If that sounds partisan or too severe a criticism, I would like to quote directly from a statement of the President of the United States only 2 years ago. He said:

> Unfortunately, the system of classification which has evolved in the United States has failed to meet the standards of an open and democratic society, allowing too many papers to be classified for too long a time. The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations. . . .
>
> The many abuses of the security system can no longer be tolerated. Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destines . . .

Although the present Freedom of Information Act requires de novo determination of agency actions by the Federal courts, the Supreme Court has problems to the extent which courts may engage in in camera inspection of withheld records.

A recent Supreme Court decision held that under the present language of the act, the content of documents withheld under section 552(b)(1)—pertaining to national defense or foreign policy information—is not reviewable by the courts under the de novo requirement in section 552(a)(3). The Court decided that the limit of judicial inquiry is the determination whether or not the information was, in fact, marked with a classification under specific requirements of an Executive order, and that this determination was satisfied by an affidavit from the agency controlling the information. In camera inspection of the documents by the Court to determine if the information actually falls within the criteria of the Executive order was specifically rejected by the Court in its interpretation of section 552(b)(1) of the act. However, in his concurring opinion in the Mink case, Mr. Justice Stewart invited Congress to clarify its intent in this regard.

Two amendments to the act included in this bill are aimed at increasing the authority of the courts to engage in a full review of agency action with respect to information classified by the Department of Defense, the Department of Defense, the Department of State, and other agencies under Executive order authority.

Mr. Chairman, it is the intent of the committee that the Federal courts be free to employ whatever means they find necessary to discharge their responsibilities. This was also the intent in 1966 when Congress acted, but these two amendments contained in the bill before you today make it crystal clear. I ask for your unanimous support for this legislation which is intended to close such loopholes and make the right to know more meaningful to the American people.

I would like to point out, Mr. Chair-

man, too, I know the concern expressed by at least two Members in the questions directed to the distinguished ranking minority member of the committee, the gentleman from Illinois (Mr. ERLENBORN), that the classifications of many of these documents are made at such low levels in the bureaucracy of Government that one would be almost shocked to even find out that they had the authority to impose a classification stamp.

We found at one time that classification authority was being exercised by over 2 million persons in the Federal bureaucracy. Many of those documents were classified with little understanding on the part of the classifiers and remain hidden from public view. Many of those documents could be the subject of action proposed to be taken in court under the provisions of the language now being amended to further clarify the Freedom of Information Act. I think the amendments are most worthwhile.

Mr. Chairman, before yielding the floor, I would like to address a question to the gentleman from Pennsylvania (Mr. MOORHEAD), regarding the report language on page 9 under the subheading, "Information to Congress."

As I understand it, I think it is of the utmost importance that in no way do we modify the rights of the Congress by any of the language contained in the amendments now pending before this committee.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. MOSS. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, as is the usual case, the gentleman from California is 100 percent correct.

Mr. MOSS. Mr. Chairman, I thank the gentleman.

Mrs. MINK. Mr. Chairman, will the gentleman yield?

Mr. MOSS. Mr. Chairman, I yield to the gentlewoman from Hawaii.

(Mrs. MINK asked and was given permission to revise and extend her remarks.)

Mrs. MINK. Mr. Chairman, I would like to join the gentleman in the well in expressing my very genuine support for this legislation, and commend not only the gentleman in the well, but the chairman of the subcommittee and the members of this Committee for bringing forth this legislation which will correct two major defects in the court's decision was rendered in the Mink against EPA case.

Mr. Chairman, I rise in support of H.R. 12471, legislation to amend the Freedom of Information Act.

As Congress moves to reform our election laws, it is also essential that we move forward on another front to bring Government closer to the people. This is in the area of governmental information, the free flow of which is the wellspring of our constitutional democracy.

Fortunately, we have an excellent vehicle for this. The Freedom of Information Act, first enacted in 1966, provides a tested and workable mechanism for assuring the disclosure of information to the public while at the same time protecting the confidentiality of the Government process where necessary.

Acting on the experience gained under the basic statute, we can refine and improve the act as needed. H.R. 12471 is an effort to do this. It is a carefully considered and drafted bill which was reported out unanimously by the members of the Committee on Government Operations. It makes spare and judicious changes in the act, the need for which has been fully demonstrated by events in the information area.

I would like to discuss one such change in particular, as I was a participant in the events which showed the act must be clarified. On January 22, 1973, the U.S. Supreme Court rendered its decision in the case of Environmental Protection Agency against Mink, et al. This was the first interpretation of the Freedom of Information Act by the Supreme Court. I had initiated the suit a year earlier with 32 other Members of Congress as coplaintiffs. We sought as Members of Congress and as private individuals to compel the executive branch to release papers on the nuclear test "Cannikin." At the time, Congress was making a decision on whether to authorize and appropriate funds for the test.

In our suit, we asked that the judicial branch rule on the Executive's compliance with provisions of the act. We secured an Appeals Court directive to the Federal district judge to review the documents in camera to determine which, if any, should be released. This seemed entirely proper to us as an initial step under the act, since the act does provide for court determination under section (a) (3) on a de novo basis of the validity of Executive withholdings.

Unfortunately, in the Mink case the Supreme Court reached a decision that most of us regard as somewhat tortuous in this regard. When the executive branch took the Appeals Court decision to the higher court on certiorari, the Supreme Court held that in camera reviews of material classified by the President as national defense and foreign policy matters are not authorized or permitted by the act.

The basis of this decision was the act's list of exemptions from compelled disclosure. Exemption No. 1, under section (b) (1) of the act, exempts matters authorized by specific Executive order to be kept secret in the interest of the national defense or foreign policy. Somehow, the Supreme Court decided that once the Executive had shown that documents were so classified, the judiciary could not intrude. Thus, the mere rubberstamping of a document as "Secret' or "Confidential" could forever immunize it from disclosure. All the courts could do was to determine whether it was so stamped. An affidavit was used in the Mink case to prove this. No judge ever saw the documents at all, not even their cover page.

The abuses inherent in such a system of unrestrained secrecy are obvious. As the system has operated, there is no specific Executive order for each classified document. Instead, the President issued one single Executive order establishing the entire classification system, and all of the millions of documents stamped "Secret" under this over succeeding years are now forever immune from even the most superficial judicial scrutiny. A lower-level bureaucrat could stamp the Manhattan telephone directory "Top Secret" and no court could order this charged. Under the Supreme Court edict, the Executive need only dispatch an affidavit signed by some lowly official certifying that the directory was classified pursuant to the Executive order, and no action could be taken.

Obviously, something must be done to correct this ridiculous court interpretation. It need not be a drastic step. Actually, it was the original intention of Congress in adopting the Freedom of Information Act to increase the disclosure of information. Congress authorized de novo probes by the judiciary as a check on arbitrary withholding actions by the Executive. Typically, the de novo process involves in camera inspections. These have been done by lower courts in the case of materials withheld under other exemptions in the act. They can be barred under exemption No. 1, only through a misguided reading of the act and by ignoring the wrongful consequences.

H.R. 12471 contains two minor changes in the act to correct this aspect of the Mink decision and make crystal clear that courts have authority to make in camera inspections of original documents, no matter under what exemption they were withheld, to assure compliance with the Freedom of Information Act.

The first change inserts the words "and may examine the contents of any agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth" in the act. This change will remove all doubt that courts have discretionary authority to utilize in camera inspections when they believe it is desirable. It does not compel such actions but leaves it to the discretion of the court.

The other change brought about by the Mink decision revises the wording of exemption No. 1. Instead of referring merely to matters specifically required by Executive order to be kept secret, it will exempt matters "authorized under criteria established by an Executive order to be kept secret. This will give courts leeway to probe into the justification of the classification itself. The change will empower courts to determine whether the matters meet the criteria established by the Executive order under which they were withheld. In effect, courts will be able to rule on whether disclosure actually would bring about damage to the national security or on whatever other test is set forth in the Executive order as justification for the classification. Our intention is making this change is to place a judicial check on arbitrary actions by the Executive to withhold information that might be embarrassing, politically sensitive, or otherwise concealed for improper reasons rather than truly vital to national defense or foreign policy. We are not say-

ing any material must be released, only that it must be submitted to an impartial judge to determine whether its withholding meets the provisions and purposes of the act.

I believe these changes are essential if we are to restore the proper functioning of our democratic process. I ask for approval of H.R. 12471.

Finally in closing, I would like to acknowledge the Members of Congress in 1971, who joined me in my suit against the Government, which led to the Mink against EPA decision. The Members of Congress who were coplaintiffs are:

LIST OF COPLAINTIFS

(Senator) James Abourezk, Bella S. Abzug, Herman Badillo, (the late) Nick Begich, Phillip Burton, William Clay, (former Rep.) John G. Dow, Robert F. Drinan, Bob Eckhardt, Don Edwards, William D. Ford, Donald M. Fraser, Michael Harrington, Augustus F. Hawkins, Ken Hechler, James J. Howard.

Robert W. Kastenmeier, Edward I. Koch, Robert L. Leggett, Spark M. Matsunaga, Romano L. Mazzoli, (former Rep.) Abner J. Mikva, Parren J. Mitchell, John E. Moss, Thomas M. Rees, Teno Roncallo, Benjamin S. Rosenthal, Edward R. Roybal, (the late) William F. Ryan, (former Rep.) James H. Scheuer, John F. Seiberling, Frank Thompson, Jr.

The CHAIRMAN. The time of the gentleman from California has again expired.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 1 additional minute to the gentleman from California (Mr. Moss).

Mrs. MINK. Mr. Chairman, this has been a very long struggle for many of us, including the gentleman in the well, in the case we brought against the Government for the disclosure of information which we felt was so essential in our deliberations. The actions of this committee today in bringing this bill to the House will serve to enlarge not only our ability but the ability of the American people to acquire important information so that we can fully participate in this democracy.

Mr. Chairman, I thank the gentleman again, together with the chairman and members of the committee.

Mr. MOSS. Mr. Chairman, I thank the gentlewoman, and I would like to take this opportunity to express to the gentleman from Pennsylvania (Mr. MOORHEAD) and the gentleman from Illinois (Mr. ERLENBORN) my unqualified admiration for the work they did in drafting these amendments.

Mr. Chairman, I am pleased to support them in offering the amendments to the House today.

Mr. ERLENBORN. Mr. Chairman, I yield 4 minutes to the gentleman from Ohio (Mr. BROWN).

(Mr. BROWN of Ohio asked and was given permission to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Chairman, I support the laudable objectives of the Freedom of Information Act, and the worthy attempt that the committee is making to strengthen the act and clarify certain ambiguities that still plague the act. But the House should make clear that the Corporation for Public Broadcasting is not intended to be covered within the expanded definition of "agency" which is part of this amendment. The corporation clearly is not a Government corporation or a Government controlled corporation and should not become subject to the act under those terms as used within the expanded definition of "agency" in the amendment.

The Public Broadcasting Act of 1967 expressly provided that the corporation is not to be "an agency or establishment of the U.S. Government." Rather it is a private, independent corporation incorporated pursuant to the District of Columbia Nonprofit Corporation Act. Although Congress was desirous of supporting public broadcasting with Federal funds in 1967, it was keenly aware that it would be inappropriate—constitutionally and otherwise—for the Government itself to perform the support activities that it envisioned for the corporation. Congress established a private corporation so that the Government itself would not be involved in deciding how the Federal funds appropriated for the support of public broadcasting would be used.

Of course, the corporation is not opposed to making available to the public information concerning its activities. Indeed, it is important that the public understand what the corporation does for it to succeed in its mission. But it would be a mistake to treat the corporation as a Government agency or Government controlled corporation when its very reason for being is insulation from the Government. If the corporation is made subject to the act, the corporation will inevitably be clothed with the trappings of Government.

So, Mr. Chairman, I rise to inquire of both the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. MOORHEAD), and the ranking Member, the gentleman from Illinois (Mr. ERLENBORN) if, under the language on page 8, the definition of "agency," in reference to the Corporation for Public Broadcasting, is not inconsistent with the language of the legislation and if, in fact, there is any effort to get control of the corporation or its decisionmaking function through this act. I would certainly hope not.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Pennsylvania.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, as I stated earlier in the debate, the language of the statute, where is says, "Government-controlled corporation," would be controlling over the language of the report. If the Corporation for Public Broadcasting is not a Government-controlled corporation, then the provisions of the act would not reach it.

I will say to the gentleman that if the act does apply to the corporation, there is no intention to do anything but give individual members of the public the right to get information. I am sure that this corporation would give that to the individual citizens, either with the law or without the law.

There is no intent to institute Government control or congressional control over the corporation itself.

Mr. BROWN of Ohio. Mr. Chairman, I thank the gentleman for his response.

The gentleman from Illinois (Mr. ERLENBORN), will concur, I trust.

Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, I will state that the gentleman is correct.

Mr. GUDE. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. Mr. Chairman, I yield to the gentleman from Maryland.

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, the people's right to know is fundamental in our democracy. H.R. 12471 advances that right by making improvements in administrative procedures under the Freedom of Information Act. As a member of the subcommittee which considered this bill, I wish to add my support of it.

I would like to address myself to two provisions of H.R. 12471 in particular: Section (1) (d), which permits—but does not require—courts to examine the contents of agency records in camera to determine whether the records or any portion of them may be withheld from the public under any of the exemptions to the act, and section (2), which makes clear that only documents which may be kept secret in the interest of the national defense or foreign policy are those which have been properly classified.

Just before be began our hearings on two bills to amend the Freedom of Information Act, both of which I cosponsored, the Supreme Court ruled in *Environmental Protection Agency* v. *Mink*, 410 U.S. 73 (1973), that courts could not review the contents of classified documents. It decided that a determination of whether material was properly classified was satisfied by an affidavit from the agency controlling the information.

On the basis of personal experience, Mr. Chairman, I do not believe that this decision is reasonable. Let me cite one example. Weather modification in Vietnam during American participation in the war there is a subject in which I have had considerable interest. Both Senator CRANSTON and I have asked the Defense Department for information about this subject repeatedly since 1971; we have been denied it each time. Senator PELL, who is the chairman of the Senate Subcommittee on Oceans and International Environment, has also asked for this information, and he, too, has been denied it.

Weather modification is one of the most sensitive and fascinating scientific topics being discussed today. Scores of meteorologists and environmentalists are very concerned about developments in this area. Surely Congress ought to know what the Defense Department is doing with regard to it before legislating on measures in this field, such as my House Resolution 329, expressing the sense of the House that the United States should seek prohibition of weather modification as a weapon of war.

I think that the Department erred in not releasing information on weather

modification, but under the present law, I could not seek court review of the Department's position.

If H.R. 12471 were to be enacted, however, I could seek that court review. I could get a hearing by an independent arbiter on whether the executive branch had acted rightly in withholding information. I am pleased to vote for a bill which makes this improvement in the administration of the Freedom of Information Act.

(Mr. ALEXANDER, at the request of Mr. MOORHEAD of Pennsylvania, to revise and extend his remarks at this point in the RECORD.)

Mr. ALEXANDER. Mr. Chairman, I rise in support of H.R. 12471, which is designed to strengthen the Freedom of Information Act. This legislation is another step in making certain that government is the servant of the people and not its master.

One provision is especially important in this regard. The bill provides for the recovery of attorney fees and costs at the discretion of the courts.

Why is this so important? For one thing, ther ehas been altogether too much unnecessary litigation forced upon our citizens by Federal agencies that feel they own or have a proprietary interest in Government information—information that belongs to all of our people.

Citizens are sometimes compelled to spend thousands of dollars—money they can ill afford—simply to assert rights which Congress is attempting to implement under both the spirit and letter of the Constitution.

The Government has lost more than half of its Freedom of Information cases. That is not much of a track record. In fact, it is lousy. And guess who is stuck with the tab? The unfortunate citizen complaintant and the taxpayers.

The committee feels that once the Government has to take full responsibility for litigating indefensible cases, it will think twice before going to the mark in the first instance.

Let me emphasize that the recovery of reasonable attorney fees and other litigation costs is at the discretion of the court. It may take into consideration those factors it considers consistent with the administration of justice.

These may include when the suit advances a strong congressional policy, the ability of the plaintiff to sustain such expenses without harmful sacrifice, the obstinance of the Government in pressing a weak case, the question of possible malice and any other factors considered important to the court.

The committee feels strongly that no plaintiff should be forced to suffer any possible irreparable damage because the Government failed to live up to the letter and spirit of the Freedom of Information Act.

Only when this Nation's most threadbare citizen can stand before the full array of Government power and emerge victorious in every sense when his cause is just will the full promise of our system of government be realized. That promise must be guarded and brought to reality and that is our intention.

I ask this House to strike another blow for liberty and approve this legislation with resounding affirmation for its constitutional goals.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida (Mr. FASCELL), a member of the committee.

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, as one of the original charter members of the Moss subcommittee, appointed by the late Chairman Dawson in 1955 to investigate Government secrecy and withholding practices, I am particularly pleased to support the pending bill, H.R. 12471.

This measure would measurably improve and strengthen the original Freedom of Information Act, now in operation for almost 7 years. Our committee has spent many weeks of concentrated effort in investigative and legislative hearings and in public markup sessions to draft and perfect the legislation before us today. The need for these amendments has been fully documented in our 1972 investigative report House Report 92-1418—and in our legislative report on this measure—House Report 93-876. I commend these two documents to all Members. They make a clear-cut case for these important amendments to curb Federal agency delays and other abuses in the administration of the act, to clarify and reaffirm original congressional intent, and to make the Freedom of Information Act a much more usable tool for the working press.

Mr. Chairman, the advantages of open public access to the workings of government have been clearly demonstrated in both the Federal Freedom of Information Act and in my own State of Florida through the "sunshine law." One of the ways in which we can help reestablish public confidence in our governmental operations is by the quick enactment of these amendments to the Freedom of Information Act.

For the most part, the Federal courts have taken adequate notice of the importance of the act as a milestone enactment by Congress in preserving the fundamental right of all Americans to be informed about the business of their Government. The pending legislation, therefore, does not change the language of eight of the nine exemptions contained in section 552(b) of the act. One of the most eloquent statements by a Federal court in support of the principles of the act was made in the 1971 freedom of information case of Soucie against David:

> Congress passed the Freedom of Information Act in response to a persistent problem of legislators and citizens, the problem of obtaining adequate information to evaluate Federal programs and formulate wise policies. Congress recognized that the public cannot make intelligent decisions without such information, and that governmental institutions become unresponsive to public needs if knowledge of their activities is denied to the people and their representatives. The touchstone of any proceedings under the Act must be the clear legislative intent to assure public access to all governmental records whose disclosure would not significantly harm specific governmental interests. The policy of the act requires that the disclosure requirements be construed broadly, the exemptions narrowly.

Mr. Chairman, one historical reference is particularly important in understanding the need for these amendments. When hearings were held 9 years ago by the Moss subcommittee on legislation that finally was enacted as the Freedom of Information Act of 1966, every single witness from the Federal bureaucracy—then under a Democratic President—opposed the bill. They claimed that it would seriously hamper the functioning of Federal agencies and be ruinous to the decisionmaking process. Despite their opposition, the bill was unanimously passed by the Congress and President Johnson wisely signed it into law. Of course, no such calamitous result was forthcoming. The spectres never appeared. During the hearings on this current legislation to strengthen the freedom of information law, every single witness from the Federal bureaucracy—this time under a Republican President—has again opposed the bill, using the same types of discredited arguments heard 9 years ago. I trust that history will repeat itself and that Congress will again give its overwhelming approval to freedom of information legislation and that the present White House incumbent will likewise sign the bill into law.

Mr. Chairman, I urge our House colleagues to support the important bipartisan amendments to the Freedom of Information Act as contained in H.R. 12471.

Mr. Chairman, I would just simply like to add two points: One is that the original act, after long years of study and thousands of pages of testimony, has been in operation now for 7 years, and all of the cries that were raised at the time the original act was passed can be summed up probably in this fashion: That it was said that if we passed the Freedom of Information Act, it would bring the executive branch of Government to a grinding halt.

None of that, of course, has happened. The Freedom of Information Act has found its place in the legislative history and in the administration of our Government. It has been an extremely useful tool for our citizens, and it has helped build confidence in Government. Goodness knows, we need more of that.

So these amendments now are another long step toward clarifying the right of public access to Government information.

Mr. Chairman, I would just want to add this one thought: That none of the fears that have been expressed really materialized. I do not believe that any would materialize in the future as a result of these amendments or any other act that deals with this subject. I think it is too well ingrained now in our legislative history, and in the operational history of this Government.

One point we should keep in mind is that members of the public and the rights of individual Congressmen are also covered under this act as members of the public, and I would like to ask the chair-

man of the committee, once again, in view of the long history on this point, that whatever rights accrue to Members of Congress under this act as Members of the body politic, this in no way is in derogation of other rights which may exist by reason of our responsibilities as Members of Congress and in no way diminishes or modifies those rights.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, the gentleman is entirely correct.

(Mr. FASCELL asked and was given permission to revise and extend his remarks.)

Mr. LEHMAN. Mr. Chairman, I rise in support of the Freedom of Information Act amendments, and urge the defeat of any weakening amendments.

Mr. Chairman, the people in the 13th District in Florida wonder why it takes over a month to receive even an interim reply from a Federal agency on a request for information. As a matter of fact, my staff often has the same problem.

The information stored in Government files is valuable stuff. And the people whose taxes paid for it should in most circumstances be able to get hold of information quickly. I am pleased to see that the committee has set time limits of ten working days for agency action on original requests.

The Freedom of Information Act amendments before us today are more of what we in Florida call "government in the sunshine." Government in the sunshine is letting the people see what it is that the Government is doing, and gives the people better access to the Government. Conversely, it also makes the Government more responsive to the people.

Mr. Chairman, I urge the support of my colleagues for this bill.

Mr. HANRAHAN. Mr. Chairman, I was particularly proud of the recent action of the House of Representatives in passing H.R. 12471. This bill represents the first comprehensive attempt to expand and improve upon the Freedom of Information Act which became public law in 1966.

Never before in the history of America has the need for better access to governmental information by the people been so great. One of the major reasons so many Americans have lost faith in our form of government, has been the persistent belief that ours is a government of the few which makes its decisions in secret. The whole purpose of the Freedom of Information Act was to open up governmental information to the scrutiny of the American people. By passing H.R. 12471, the House has acted decisively to make this important public law more effective and available for use by all Americans.

The following major improvements to the Freedom of Information Act are included in H.R. 12471:

First. A current index of agency policies and documents shall be promptly published and distributed to interested individuals by sale or otherwise;

Second. Requests for information must merely "reasonably describe" as opposed to "specifically identify" records in question;

Third. Nothing in this bill shall be construed to limit in any way congressional access to information;

Fourth. Time limits for each phase of agency response to informational requests are set up. Original requests must be acted upon within 10 days. Administrative appeals must be decided within 20 working days. Court proceedings may be initiated if these deadlines are not met;

Fifth. The court may reimburse an informational requester in cases where the agency denial is not upheld;

Sixth. The court may examine in secret any information denied to see if it falls into any category of excluded information.

Seventh. Information denied for security reasons must be specifically identified as such by the executive branch;

Eighth. Each agency must submit an annual report of its efforts to meet the requirements of this Act including the number of denials, reasons for each and the amount and rate of fees; and

Ninth. All executive agencies and Government corporations, including the Executive Office of the President, are required to abide by this act.

As a Member of Congress who has taken a deep and abiding interest in the free flow of Government information, I feel the House has acted in the public interest by passing H.R. 12471. I sincerely hope this wise and farsighted measure will be speedily enacted into law.

Mr. PATTEN. Mr. Chairman, many years ago, Lord Acton wrote that—

> Everything secret degenerates, even the administration of justice; nothing is safe that does not show it can bear discussion and publicity.

I have always believed that, for I am convinced that the public has the right to know what the Government is doing right—or wrong. That is why I was a cosponsor of the Freedom of Information Act of 1966. It always disturbed me to read or hear that some Federal departments or agencies conceal public information, instead of revealing it.

Although the 1966 act has made more information available to the public, many improvements have to be made before Congress can really say it is furnishing the people with the information they deserve. Therefore, once again, I have become a cosponsor of freedom of information legislation, because it contains provisions that help strengthen the present law. The new legislation not only strengthens procedural aspects, but also improves its administration, and expedites the handling of requests for information from Federal agencies, including reports to Congress that will show applications for information denied.

Mr. Chairman, I have, like Jefferson, "confidence in the people, cherish and consider them as the most honest and safe." After years in public life, my confidence in the people has grown, while my faith in some who govern has declined. Yet, I have hope and believe that one of the best ways of improving the low estem in which Congress is held by the public—only about 21 percent think we are doing a good job—is to pass a Freedom of Information Act that will provide people with the information they need about government. If government is right, it should be praised, and if it is wrong, it should be criticized.

I urge my colleagues to vote for this bill, for it will not only strengthen the public's right-to-know, but also help restore some of the public confidence that Federal agencies and Congress have lost.

Mr. THOMPSON of New Jersey. Mr. Chairman, I rise in support of H.R. 12471 in order that the Freedom of Information Act might be strengthened and made a more workable tool by the news media and other Americans.

As a cosponsor of the original 1973 bill on which the Foreign Operations and Government Information Subcommittee held hearings, I have closely followed the markup sessions that produced this bipartisan measure before us today. I think it significant, Mr. Chairman, that there is a broad representation of the political spectrum of both sides of the aisle in support of this bill.

History has repeatedly shown that an obsession for secrecy in governmental institutions has been the handmaiden of repression, corruption, and dictatorial rule. Government secrecy for the purposes of hiding wrongdoing, inept leadership, or bureaucratic errors undermines and can eventually destroy our system of representative government. The confidence of the American public in governmental institutions must be restored if we, as a nation, are to emerge from the Watergate doldrums. This bill to make the Freedom of Information Act a more viable weapon in the fight against secrecy excesses of the entrenched Government bureaucracy is an important start in that direction.

Mr. Chairman, in that connection we should all heed the recent observations of former Chief Justice Earl Warren when he said:

> It would be difficult to name a more efficient ally of corruption than secrecy. Corruption is never flaunted to the world. In Government, it is invariably practiced through secrecy. . . . If anything is to be learned from our present difficulties, compendiously known as Watergate, it is that we must open our public affairs to public scrutiny on every level of Government. . . .

I urge that we begin today by an overwhelming vote in support of H.R. 12471, to let the American public know that we in Congress believe that freedom of information is the best antidote for the Watergate secrecy and coverup poison.

Mr. OBEY. Mr. Chairman, I should like to commend the gentleman from Pennsylvania (Mr. MOORHEAD) and the Foreign Operations and Government Information Subcommittee which he chairs for doing a superb job of legislative oversight on the Freedom of Information Act. That painstaking and hard-hitting job of oversight in the 92d Congress led to the introduction last year of amendments to clarify and strengthen the act, which I was pleased to cosponsor. Subsequent legislative hearings helped shape the amendments that are before us now.

I think a strong case for these amendments has already been made. All I hope to do now is contribute one example of why congressional vigilance is necessary to assure that the Freedom of Informa-

tion Act functions in the way Congress intended.

Last December 27 the Soil Conservation Service of the Department of Agriculture published regulations prescribing the policies, procedures and authorizations governing the public availability of its materials and records under what it erroneously referred to as the "Public Information Act."

The SCS said it would make its records available with "reasonable promptness" for inspection or copying, except for certain kinds of records which it then listed. The SCS may have intended that its list reflect the act's list of certain categories of information that are exempt from mandatory disclosure, but the agency stumbled before it even got started.

Its very first category was:

Materials specifically required by Executive orders to be kept secret.

A much, much broader category than that specified by the act itself, which now reads:

Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.

To compound its error, the SCS did not invite public comment on its regulations, declaring blandly that—

No substantive basic policy or procedural changes have been made.

Of course, that allegation was nonsense.

I cite this example to show that Federal agencies still cannot yet be trusted to live up to the Freedom of Information Act on their own. We must monitor them constantly and continue to demand that they strive to comply with the law to the fullest. If we do not, the public will not have the access to government information that it is entitled to have under the law.

Mr. Chairman, I urge that these amendments to the Freedom of Information Act be passed as reported out by the Government Operations Committee.

Mr. BROOMFIELD. Mr. Chairman, I rise today in support of H.R. 12471, to amend the Freedom of Information Act. When this historic act was passed in 1966, the intent was to guarantee the right of the American people to know what their Government was doing by enabling them to obtain information and records from Federal agencies.

It has been increasingly evident since then that the 1966 act lacks the strength necessary to make it effective in this area. Certain ambiguities and weaknesses have prevented it from achieving the results intended by its passage. We have the opportunity today to correct this situation and inject new life into the original act by passing H.R. 12471.

The basis of a sound democracy is an informed public. We pride ourselves on being a government that depends on the voices of all the people, not just a few. But for these voices to play an active part they must have access to knowledge. Otherwise, they are merely the voices of ignorance.

The access to Government information is a basic right of all the American people. As one of our greatest Presidents said, this is a government "of the people, by the people, and for the people." I urge all my colleagues to echo Abraham Lincoln's words today by voting favorably on H.R. 12471.

Mr. DRINAN. Mr. Chairman, the people's right to know how the Government is discharging its duties is essential to a democratic society. This is the basis of the Freedom of Information Act, and for the amendments to that act before us today.

One of the most important features of the legislation before us today is that it would create the machinery for continuous congressional oversight of the information practices of the Federal Government.

The underlying principle of the Freedom of Information Act is that of Congress performing its most essential role, acting as a check in balance on the growth of executive power. Indeed, Senator STUART SYMINGTON, quoted in "The Pentagon Papers and the Public," Freedom of Information Center Report No. 0013—U. Mo. July 1971—gave an excellent example of the dangers of secrecy in Government when he stated that he "slowly, reluctantly, and from the unique vantage point of having been a Pentagon official and the only Member of Congress to sit on both the Foreign Relations and Armed Services Committees concluded that executive branch secrecy has now developed to a point where secret military actions often first create and then dominate foreign policy responses."

The bill before us today strengthens the Freedom of Information Act of 1966. It provides for a wider availability of agency indexes listing informational items. It permits access to records on the basis of a reasonable description of a particular document rather than requiring specific titles or file numbers as is presently the case in many agencies. The bill sets short time limits for agency responses to inquiries. It provides for recovery of attorneys' fees and court costs by plaintiffs.

The bill also permits in camera court review of classified documents for purposes of determining whether the documents were properly classified under executive authority. This key provision in effect reverses *Environmental Protection Agency et al.* v. *Patsy T. Mink et al.*, 410 U.S. 73 (1973), a suit in which I was one of 33 congressional party plaintiffs, by specifically allowing in camera inspection by the courts of all documents in dispute, including those which may relate to national defense and those which may fall into the category of inter and intraoffice memoranda. This provision reestablishes the original intent of this bill.

The purpose of this legislation is to facilitate access to information by the public. At a time when the deleterious effects of Government secrecy have never been in greater evidence, this legislation is most welcome.

Mr. REUSS. Mr. Chairman, I strongly support H.R. 12471. The Freedom of Information Act should be strengthened and improved after 7 years of operation.

The Government Operations Committee adopted a comprehensive report on the administration of the Freedom of Information Act in September 1972. It was the unanimous view of the membership of our committee, based on many weeks of hearings and investigations by the Foreign Operations and Government Information Subcommittee, that certain amendments were required to make the law truly effective.

Hearings held on legislation to implement this committee recommendation were held last year and produced supporting testimony and statements from a number of widely diverse organizations, including:

From the news media:

Creed Black, editor of the Philadelphia Inquirer;

Herbert Brucker, former editor of the Hartford Courant and former president of the American Society of Newspaper Editors;

J. R. Wiggins, former editor of the Washington Post, past president of the ASNE, now publisher of the Ellsworth, Maine, American;

Richard Smyser, editor of the Oak Ridger, Oak Ridge, Tenn., and vice president of the Associated Press Managing Editors;

Clark Mollenhoff, former Nixon White House counsel and now bureau chief of the Des Moines Register-Tribune;

Ted Koop, Washington office director of the Radio-Television News Directors Association;

E. W. Lampson, president of the Ohio Newspaper Association;

Ted Serrill, executive vice president, National Newspaper Association;

Courtney R. Sheldon, chairman, Freedom of Information Committee, Sigma Delta Chi;

Stanford Smith, president, American Newspaper Publishers Association;

William H. Hornby, executive editor, the Denver Post and chairman, FOI Committee, American Society of Newspaper Editors; and

The Association of American Publishers, Inc.

From the legal profession:

John T. Miller, chairman, section of administrative law, American Bar Association;

Richard Noland, vice chairman, Committee on Access to Government Information, American Bar Association;

Stuart H. Johnson, Jr., chairman for Freedom of Information, Federal Bar Association;

John Shattuck, staff counsel, American Civil Liberties Union;

Ronald Plesser, attorney, Center for the Study of Responsive Law; and

Thomas M. Franck, law professor and director, Center for International Studies, New York University.

The measure is also supported by the American Library Association, Common Cause, and has been cosponsored in its various forms by more than 75 Members of the House and Senate.

H.R. 12471 contains needed and well-conceived amendments to the original 1966 Freedom of Information Act. While they may not solve all of the problems in its day-to-day administration resulting from foot-dragging tactics of the Federal bureaucracy, it will serve notice that Congress and the public strongly

reaffirms its support for the principles of the people's "right to know." As the late President Lyndon Johnson said when he signed the original measure into law:

This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest. . . . I signed this measure with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded.

Mr. HARRINGTON. Mr. Chairman, in 1966 the Congress saw fit to enact Public Law 89-487—popularly recognized as the "Freedom of Information Act." This landmark legislation was structured to guarantee the right of citizens to know the business of their Government. But for all of its desirable ambitions, the Freedom of Information Act has, at times, proved incapable of assuring public access to the records of Federal agencies and departmnts.

Accordingly, the Committee on Government Operations of the House of Representatives has reported out legislation (H.R. 12471) to further protect the right of the public to check on the activities of the Federal Government, by improving the Freedom of Information Act.

During the summer of 1971, the Government Operations Subcommittee on Foreign Operations and Government Information undertook a comprehensive study of administration of the Freedom of Information Act by the Federal agencies. This investigation revealed widespread abuses of the act by the Federal agencies involved. By resorting to delaying tactics, various classification ploys and requiring of requestors a specificity of identification of desired information, Federal agencies were able, all too often, to successfully circumvent a multitude of the public's requests. The subcommittee, in its subsequent report, suggested a series of administrative changes to correct existing deficiencies in making information available by the Federal Government. Also set forth were a list of specific legislative objectives designed to improve the administration of the Freedom of Information Act. H.R. 12471, now before this House, is legislation that should correct those deficiencies noted by the subcommittee.

This measure, similar to H.R. 5425 which I sponsored in the previous session of the 93d Congress, seeks to accomplish more efficient, prompt, and full disclosure of information. H.R. 12471 would affect the following areas of the Freedom of Information Act:

H.R. 12471 would improve the availability of Federal agency indexes, which list the specific information available from individual agencies. The bill would require that indexes be readily available, in usable and concise form, upon request, even though agencies would not, by reasons of practicality, be required to print indexes in bound form.

Many agencies at present require an individual to designate a specific title or file number to identify desired documents. H.R. 12471 would allow for the retrieval of information with only a reasonable "description" of the requested information, thus restricting one manner in which citizens' access to information has been limited in the past.

Frequently, information from the Federal Government can be used only if it is timely. Too often, however, the intent of the Freedom of Information Act has been circumvented by dilatory tactics on the part of agencies. To deal with this problem, H.R. 12471 would set a 10-day time limit on agency responses to original requests for information, and 20 days for administrative appeals of denials. In unusual cases, good faith assurances of the agency will allow for an extension of the time period allowed. So as to expedite litigation carried out under the Freedom of Information Act, the bill would also cut to 20 days the present 60-day requirement for agency response to complaints. The bill would also allow defendents to recover attorney's fees from the Government, as well as court costs, if the case goes against the Government.

An important expansion of the coverage of the act is also included in H.R. 12471, as the definition of what constitutes an "agency" is expanded. Government corporations, such as the Tennessee Valley Authority, and Government-controlled corporations, such as the Corporation for Public Broadcasting or Amtrak, would come under the authority of the Freedom of Information Act for the first time. Also, agencies within the executive branch, such as the Office of Management and Budget or the National Security Council, would be covered.

H.R. 12471 also contains a provision extremely significant in the light of recent controversies over the classification of Government documents. The bill would permit, at the option of the court, in camera court review of document classification. Courts would be enabled to review the actual classified documents, rather than the classification notices, as is often the case under existing law. Courts would be empowered to determine whether the classifications imposed upon documents by agencies were properly constituted. These new procedures, I hope, will reduce the appalling incidence of smokescreen "national security" defenses raised by the Government in Freedom of Information Act cases.

Mr. Chairman, this important legislation enhances and improves the original Freedom of Information Act. In a nation which claims with just pride that it is ruled "by the people," the accessibility of Government records to the populace is of great importance. The amendments proposed to the original act by H.R. 12471 would limit the abuses of the act by Federal agencies that have had a chilling effect on the ability of citizen's to fulfill their right to know. Today the House has the opportunity to pass historic legislation, building upon the foundation of the original 1966 Freedom of Information Act. We should not shirk from the task before us today; we should pass this bill.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. All time having expired, the Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) The fourth sentence of section 552(a)(2) of title 5, United States Code, is amended by striking out "and make available for public inspection by copying" and inserting in lieu thereof ", propmtly publsh, and distribute (by sale or otherwise) copies of".

(b) Section 552(a)(3) of title 5, United States Code, is amended by striking out "on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed," and inserting in lieu thereof the following: "upon any request for records which (A) reasonably describes such records, and (B) is made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed,".

(c) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) Each agency, upon receipt of any request for records made under this subsection, shall—

"(A) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the date of such receipt whether to comply with the request and shall immediately notify the person making the request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

"(B) make a determination with respect to such appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of such appeal.

"Any person making a request to an agency for records under this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with subparagraph (A) or (B) of this paragraph. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to the person making such request."

(d) The third sentence of section 553(a)(3) of title 5, United States Code, is amended by inserting immediately after "the court shall determine the matter de novo" the following: ", and may examine the contents of any agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b),".

(e) Section 552(a)(3) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, the United States or the officer or agency thereof against whom the complaint was filed shall serve a responsive pleading to any complaint made under this paragraph within twenty days after the service upon the United States attorney of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the United States or an officer or agency thereof, as litigant, has not prevailed."

SEC. 2. Section 552(b)(1) of title 5, United States Code, is amended to read as follows:

"(1) authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy;".

SEC. 3. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Operations and the Committee on the Judiciary of the Senate. The report shall include—

"(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

"(2) the number of appeals made by persons under subsection (a)(5)(B), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(3) a copy of every rule made by such agency regarding this section;

"(4) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(5) such other information as indicates efforts to administer fully this section.

"(e) Notwithstanding section 551(1) of this title, for purposes of this section, the term 'agency' means any executive department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

SEC. 4. The amendments made by this Act shall take effect on the ninetieth day beginning after enactment of this Act.

Mr. MOORHEAD of Pennsylvania (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. Are there any amendments?

AMENDMENT OFFERED BY MR. WHITE

Mr. WHITE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WHITE: On page 4, lines 9 through 14, strike all of subsection (d) and insert the following in lieu thereof:

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include—"

(Mr. WHITE asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Chairman, my amendment to the Freedom of Information Act bill is designed to bring the bill in conformity with the rules of the House. I cite you on page 542, rule 40, entitled "Executive Communications":

Estimates of appropriations and all other communications from the executive departments, intended for the consideration of any committees of the House, shall be addressed to the Speaker, and by referred as provided by clause 2 of rule 24.

Clause 2 of rule 24 states:

Business of the Speaker's table shall be disposed of as follows:

Messages from the President shall be referred to the appropriate committees without debate. Reports and communications from the heads of departments, and other communications addressed to the House . . . may be referred to the appropriate committees in the same manner. . . .

Section 3 of the bill calls for submission of a report by each agency to the Government Operations Committees of the House and Senate and to the Senate Judiciary Committee. But, according to the House rules all such agency reports must first be directed to the Speaker of the House. Then the Speaker may refer them in accordance with rule 24, clause 2, to the appropriate committee. I understand the Senate has the same procedure.

If you desire to maintain order in the application of our rules to our bills, then my amendment should be adopted. Although my amendment may be a technical one, it is offered with the purpose of keeping the laws we make on submission of agency reports consistent with the rules we have made for ourselves.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I am glad to yield to the chairman of the subcommittee.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, the gentleman from Texas (Mr. WHITE), has been kind enough to provide us with a copy of his amendment. Insofar as the members of the committee on this side are concerned, we would accept this amendment.

Mr. WHITE I thank the gentleman.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I am glad to yield to the gentleman from Illinois.

Mr. ERLENBORN. Might I call to the gentleman's attention what I consider to be a statement which perhaps is confusing in his amendment. It says "strike all of subsection (d) and insert the following in lieu thereof:" and then the material referred to is inserted. That might be construed as striking out all of subsection 1 through 5 in that subsection. I know that is not the gentleman's intention.

Mr. WHITE. No. It is lines 9 through 14 that would be stricken by the wording of the amendment. That covers the areas that I am interested in.

Mr. ERLENBORN. Then it is clear that the gentleman only intends to strike the material in lines 9 through 14?

Mr. WHITE. Yes; according to the language of the amendment.

Mr. ERLENBORN. I thank the gentleman.

Mr. Chairman, I see no objection to the language.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. WHITE).

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. ECKHARDT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act, pursuant to House Resolution 977, he reported the bill back to the House with an amendment adopted in the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. BUCHANAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 383, nays 8, not voting 41, as follows:

[Roll No. 89]

YEAS—383

Abdnor	Carney, Ohio	Eilberg
Abzug	Carter	Erlenborn
Adams	Casey, Tex.	Esch
Addabbo	Cederberg	Eshleman
Alexander	Chamberlain	Evans, Colo.
Anderson, Calif.	Chappell	Evins, Tenn.
	Chisholm	Fascell
Andrews, N.C.	Clancy	Findley
Andrews, N. Dak.	Clark	Fish
	Clausen, Don H.	Fisher
Archer		Flood
Ashbrook	Clawson, Del	Flowers
Ashley	Cleveland	Flynt
Aspin	Cochran	Foley
Badillo	Cohen	Ford
Bafalis	Collins, Tex.	Forsythe
Baker	Conable	Fountain
Barrett	Conlan	Fraser
Bauman	Conte	Frelinghuysen
Bell	Conyers	Frenzel
Bennett	Corman	Frey
Bergland	Coughlin	Froehlich
Bevill	Crane	Fulton
Biaggi	Cronin	Fuqua
Biester	Culver	Gaydos
Bingham	Daniel, Dan	Gettys
Blackburn	Daniel, Robert W., Jr.	Giaimo
Blatnik		Gibbons
Boggs	Daniels, Dominick V.	Gilman
Boland		Ginn
Bolling	Danielson	Goldwater
Bowen	Davis, Ga.	Gonzalez
Brademas	Davis, S.C.	Goodling
Bray	Davis, Wis.	Grasso
Breaux	de la Garza	Green, Oreg.
Breckinridge	Delaney	Green, Pa.
Brinkley	Dellenback	Griffiths
Brooks	Dellums	Gross
Broomfield	Denholm	Grover
Brown, Calif.	Dennis	Gubser
Brown, Mich.	Dent	Gunter
Brown, Ohio	Derwinski	Guyer
Broyhill, N.C.	Devine	Haley
Broyhill, Va.	Diggs	Hamilton
Buchanan	Dingell	Hammer-schmidt
Burgener	Donohue	
Burke, Calif.	Downing	Hanley
Burke, Fla.	Drinan	Hanna
Burke, Mass.	Duiski	Hanrahan
Burlison, Mo.	Duncan	Hansen, Idaho
Burton	du Pont	Hansen, Wash.
Butler	Eckhardt	Harrington
Byron	Edwards, Ala.	Harsha
Camp	Edwards, Calif.	Hastings

Hawkins	Miller	Shuster
Hays	Mills	Sikes
Hébert	Minish	Sisk
Hechler, W. Va.	Mink	Skubitz
Heckler, Mass.	Minshall, Ohio	Slack
Heinz	Mitchell, Md.	Smith, Iowa
Helstoski	Mitchell, N.Y.	Smith, N.Y.
Henderson	Moakley	Snyder
Hicks	Mollohan	Spence
Hillis	Moorhead, Calif.	Staggers
Hinshaw	Moorhead, Pa.	Stanton, J. William
Hogan	Morgan	Stanton, James V.
Holifield	Mosher	Stark
Holt	Moss	Steed
Holtzman	Murphy, N.Y.	Steele
Horton	Murtha	Steelman
Howard	Myers	Steiger, Ariz.
Huber	Natcher	Steiger, Wis.
Hudnut	Nedzi	Stephens
Hungate	Nelsen	Stokes
Hunt	Nichols	Stratton
Hutchinson	Nix	Stubblefield
Ichord	Obey	Studds
Jarman	O'Brien	Sullivan
Johnson, Calif.	O'Hara	Symington
Johnson, Pa.	O'Neill	Symms
Jones, N.C.	Parris	Talcott
Jones, Okla.	Passman	Taylor, Mo.
Jones, Tenn.	Patten	Taylor, N.C.
Jordan	Perkins	Thompson, N.J.
Karth	Pettis	Thomson, Wis.
Kastenmeier	Peyser	Thone
Kazen	Pike	Thornton
Kemp	Poage	Tiernan
Ketchum	Powell, Ohio	Towell, Nev.
King	Preyer	Treen
Koch	Price, Ill.	Udall
Kuykendall	Pritchard	Ullman
Kyros	Quie	Van Deerlin
Lagomarsino	Quillen	Vander Jagt
Landrum	Railsback	Vander Veen
Latta	Randall	Vanik
Leggett	Rarick	Veysey
Lehman	Regula	Vigorito
Lent	Reuss	Waldie
Litton	Riegle	Walsh
Long, La.	Rinaldo	Wampler
Long, Md.	Roberts	Ware
Lott	Robinson, Va.	Whalen
Lujan	Rodino	White
Luken	Roe	Whitehurst
McClory	Rogers	Whitten
McCloskey	Roncalio, Wyo.	Widnall
McCollister	Roncallo, N.Y.	Wiggins
McCormack	Rooney, Pa.	Williams
McDade	Rose	Wilson, Bob
McFall	Rosenthal	Wilson, Charles H., Calif.
McKinney	Rostenkowski	Winn
McSpadden	Roush	Wright
Macdonald	Rousselot	Wyatt
Madden	Roy	Wydler
Madigan	Roybal	Wylie
Mahon	Ruppe	Wyman
Mallary	Ruth	Yates
Mann	Ryan	Yatron
Maraziti	St Germain	Young, Alaska
Martin, Nebr.	Sandman	Young, Ga.
Martin, N.C.	Sarasin	Young, S.C.
Mathias, Calif.	Sarbanes	Young, Tex.
Mathis, Ga.	Scherle	Zablocki
Matsunaga	Schneebeli	Zion
Mayne	Schroeder	Zwach
Mazzoli	Sebelius	
Meeds	Seiberling	
Melcher	Shipley	
Mezvinsky	Shoup	
Michel	Shriver	
Milford		

NAYS—8

Beard	Hosmer	Waggonner
Burleson, Tex.	Landgrebe	Young, Fla.
Dickinson	Satterfield	

NOT VOTING—41

Anderson, Ill.	Johnson, Colo.	Price, Tex.
Annunzio	Jones, Ala.	Rangel
Arends	Kluczynski	Rees
Armstrong	McEwen	Reid
Brasco	McKay	Rhodes
Brotzman	Metcalfe	Robison, N.Y.
Carey, N.Y.	Mizell	Rooney, N.Y.
Clay	Montgomery	Runnels
Collier	Murphy, Ill.	Stuckey
Collins, Ill.	Owens	Teague
Cotter	Patman	Wilson, Charles, Tex.
Dorn	Pepper	Wolff
Gray	Pickle	Young, Ill.
Gude	Podell	

So the bill was passed.

The Clerk announced the following pairs:

Mr. Annunzio with Mr. Owens.
Mr. Rooney of New York with Mr. Pickle.
Mr. Cotter with Mr. Anderson of Illinois.
Mr. Rangel with Mr. Gude.
Mr. Brasco with Mr. Arends.
Mr. Gray with Mr. Mizell.
Mr. McKay with Mr. Brotzman.
Mr. Podell with Mr. Price of Texas.
Mr. Metcalfe with Mr. Reid.
Mr. Teague with Mr. Montgomery.
Mr. Wolff with Mr. Armstrong.
Mr. Pepper with Mr. Rhodes.
Mr. Kluczynski with Mr. Johnson of Colorado.
Mr. Jones of Alabama with Mr. Collier.
Mr. Carey of New York with Mr. McEwen.
Mr. Clay with Mr. Rees.
Mrs. Collins of Illinois with Mr. Runnels.
Mr. Stuckey with Mr. Robison of New York.
Mr. Dorn with Mr. Young of Illinois.
Mr. Murphy of Illinois with Mr. Charles Wilson of Texas.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION TO POSTPONE FURTHER CONSIDERATION OF H.R. 69, ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1974

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that further consideration of H.R. 69, the bill to amend and extend the Elementary and Secondary Education Act of 1965, be postponed until Tuesday, March 26, 1974.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. QUIE. Mr. Speaker, reserving the right to object, I just want to point out that the Committee on Education and Labor tried to be fair to everyone by asking the Committee on Rules to provide a rule that there be some days between general debate and the consideration of the 5-minute rule, and 3 legislative days were set aside by the rule. That ought to be ample opportunity for anyone.

We could have asked for a rule which would have permitted us to go right into the 5-minute rule after general debate and we would have been in the amendment stage right now.

I understand some Members are not happy because they have not had enough time. All the information is available now that would be available a week from now for the Members to consider; so I really think it is unreasonable that we start delaying. It is primarily important that we get moving so the schools will know what next year's program will be like.

Since the chairman of the committee asks that we put it over until a week from Tuesday, March 26, I withdraw my reservation of objection.

I just wanted to let the gentleman know my displeasure.

The SPEAKER. Is there objection to the request of the gentleman from Texas (Mr. PERKINS)?

Mr. STEIGER of Wisconsin. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

LEGISLATIVE PROGRAM

(Mr. ARENDS asked and was given permission to address the House for 1 minute.)

Mr. ARENDS. Mr. Speaker, I take this time to ask the majority leader if he will kindly announce the program for next week.

Mr. O'NEILL. Mr. Speaker, will the gentleman yield?

Mr. ARENDS. I yield to the gentleman from Massachusetts.

Mr. O'NEILL. Mr. Speaker, in reply to the distinguished minority whip and acting minority leader, may I say that the program has been made up in the following way. The program for the week of March 18, 1974, is as follows:

On Monday there will be the call of the Consent Calendar to be followed by four suspensions:

S. 1206, amend section 312 of Immigration and Naturalization Act;

H.R. 6371, Indian financing and economic development;

H.R. 10337, Navajo-Hopi partition; and

S. 2771, special pay bonus structure relating to members of the Armed Forces.

On Tuesday there will be the call of the Private Calendar, to be followed by three suspensions:

S. 2174, changes in definitions of widow and widower under civil service retirement system;

H.R. 12503, Narcotic Adddict Treatment Act; and

H.R. 12417, National Diabetes Mellitus Act.

Mr. Speaker, under the rule adopted Tuesday the Elementary and Secondary Education Act, H.R. 69, must come up on Tuesday next. As the Members know, the chairman of the committee, in response to the requests of many Members, has asked for a further postponement of this matter because of the complexity of the formula that is in the bill, the formula the gentleman from Michigan (Mr. O'HARA) is going to offer as an amendent, and other formulas which are going to be presented.

For example, Mr. Speaker, in my own home district, I understand the city of Boston loses $476,000, while my two other cities and three towns are making a net gain on the bill. There is tremendous concern among the Members of Congress who want to know how the different formulas will affect their particular areas. Some of the Members have six or seven counties, and it is not clear how their districts will be affected in total.

That was the reason the chairman asked unanimous consent that the matter go over to a week from Tuesday.

Upon taking it up, it is expected that as soon as possible, the committee will rise and we will go into the program. In other words, we will take the matter up because there has been an objection, and we expect that the committee will rise immediately. We think this is the fair thing to do because there have been so many requests by the Members of Congress on both sides of the aisle with respect to so many formulas that will probably be pending at that time.

Therefore, I will have to include on the legislative program for Tuesday the Elementary and Secondary Education Act.

For Wednesday and the balance of the week we will have H.R. 12435, the fair labor standards amendments, subject

to a rule being granted. Then, we have H.R. 11929, the Tennessee Valley Authority pollution control facilities, subject to a rule being granted. After that we have H.R. 12920, the Peace Corps authorization, subject to a rule being granted.

In addition, we have H.R. 12412, Foreign Disaster Assistance Act, subject to a rule being granted. Then, we have H.R. 11989, Fire Prevention and Control Act, subject to a rule being granted.

Finally, we will have H.R. 11105, nutrition program for the elderly, subject to a rule being granted. Conference reports may be brought up at any time, and any further program will be announced at a later date.

Mr. ARENDS. Mr. Speaker, let me just say to the gentleman from Massachusetts that I am pleased that he did not consider the primary in Illinois next Tuesday, because I think that a few years ago we established a precedent in the House that we would not be out of session on primary days. I hope we do not start that again.

Mr. O'NEILL. Mr. Speaker, I assure the gentleman from Illinois that it has no bearing on our decision.

Mr. ARENDS. Mr. Speaker, I am very pleased with the response of the gentleman from Massachusetts.

Mr. Speaker, I would like to ask one further question of the distinguished majority leader. I notice that he made no reference to post-card registration. Has that been given any consideration?

Mr. O'NEILL. Mr. Speaker, there are no plans for it for next week.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. ARENDS. Mr. Speaker I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Speaker, I want to thank the gentleman very much for yielding to me.

Mr. Speaker, I renew my unanimous-consent request to see if the gentleman from Wisconsin (Mr. STEIGER) will withdraw his objection.

Mr. Speaker, I now ask unanimous consent that the consideration of H.R. 69, the bill to amend the Elementary and Secondary Education Act, be postponed until Tuesday, March 26, 1974.

Mr. STEIGER of Wisconsin. Mr. Speaker, reserving the right to object, the Elementary and Secondary Education Act expires on the 30th of June, is that correct?

Mr. PERKINS. That is correct.

Mr. STEIGER of Wisconsin. Mr. Speaker, I find absolutely no reason to believe that this House ought to abdicate its responsibility in the consideration of ESEA. The formula is complicated. It cuts across all States and all counties; it affects everybody somewhat differently, and every formula affects somewhat differently everybody in this Chamber.

The rule under which this bill came up clearly said that we would start the debate on 1 day, go over 3 legislative days, and then come back and continue this bill.

Mr. Speaker, I must say in all honesty that if, in fact, we are going to go through this charade and if, in fact, by my objection—and I shall object—we then get into a situation where we start the debate on ESEA and then move that the Committee rise, we ought to have a vote on that, in order to be fair to each side, and decide whether or not we should start consideration of the bill or not start consideration of it.

If we decide we want the Committee to rise, so be it. That is the way the ballgame is played.

Mr. O'NEILL. Mr. Speaker, will the gentleman yield?

Mr. STEIGER of Wisconsin. Of course, I will yield to the distinguished majority leader.

Mr. O'NEILL. Mr. Speaker, the Committee on Education and Labor has studied this matter since last August. A formula was finally worked out and passed the committee by a vote of 31 to 4.

In view of the fact that there has been so much consternation among the Members on both sides of the aisle with regard to the formula, does not the gentleman think it fair that we should give the Members of Congress this added week? We are not doing it by reason of the fact that there is a primary in Illinois. That is of no concern whatsoever.

The Speaker has made the decision and has asked for the chairman of the committee to go along on a week's delay because he has had an unusual number of requests concerning this matter.

Mr. STEIGER of Wisconsin. Mr. Speaker, further reserving the right to object, I am mindful and deeply respectful of the problems faced by the distinguished majority leader, both within the Congress and within the gentleman's district.

This bill was reported by the Committee on Education and Labor some weeks ago. The Committee on Education and Labor, if I may say so, labored long and hard to achieve a formula that would effectively reconcile and balance the needs of the poor and the disadvantaged in the United States. I think the formula is a good one.

I recognize there are some Members in some States who do not believe it was fairly handled, but I think they have had more than an adequate chance to express their views. They are exceedingly well represented on the Committee on Education and Labor. The Members from the State of New York are a very sizable part of our Committee on Education and Labor.

They know what happens to the formula. They have known for weeks what happens to the formula.

Mr. Speaker, I will again say to the House and to the distinguished majority leader that I simply do not believe that further delay is justified.

Mr. THOMPSON of New Jersey. Mr. Speaker, before the gentleman objects, will the distinguished gentleman yield?

Mr. STEIGER of Wisconsin. I yield to the gentleman from New Jersey.

Mr. THOMPSON of New Jersey. Mr. Speaker, I happen to represent one of the States which would be vitally affected by the formula in title I of the Elementary and Secondary Education Act.

Only this morning I received information that involves my State. I do not know who programs the computers for the several States and counties. I had three versions of the effect title I formula would have on the State of New Jersey and on the other States as well, but I particularize the State of New Jersey.

I see no danger, I say to my friend, the gentleman from Wisconsin, that the act will expire June 1; but I do think most sincerely that a few additional days, the modest number of days that have been requested by the chairman of the Committee on Education and Labor, the gentleman from Kentucky (Mr. PERKINS) might prove extremely valuable to each and every Member.

The extremely complicated effect of the flow of dollars to the children in all of our school districts should be evaluated by each Member.

Were I the gentleman from Wisconsin, I would probably make the objection a week from now. However, I do ask the gentleman most respectfully not to object now so that we can evaluate the effect of this on our States, and our counties and on our school districts. I do not think that any injustice will be done by granting this request.

Mr. STEIGER of Wisconsin. Mr. Speaker, further reserving the right to object, I am impressed and almost moved by the plea of the gentleman from New Jersey.

Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

ADJOURNMENT OVER TO MONDAY, MARCH 18, 1974

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

DISPENSING WITH BUSINESS IN ORDER UNDER THE CALENDAR WEDNESDAY RULE ON WEDNESDAY NEXT

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule may be dispensed with on Wednesday next.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERSONAL EXPLANATION

Mr. HENDERSON. Mr. Speaker, on rollcall No. 79, March 12, 1974, I was in the Chamber, placed my card in the box, but was not recorded.

Had I been recorded, I would have been shown as present.

PARLIAMENTARY INQUIRIES RELATING TO ELEMENTARY AND SECONDARY EDUCATION ACT

Mrs. MINK. Mr. Speaker, a parliamentary inquiry.

THE WASHINGTON POST DATE 21 MAR 74 PAGE A2

The Right to Know

GOVERNMENT secrecy has become an unfortunate fact of life in American society, despite the best hopes of this nation's founders. James Madison once declared optimistically: "Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives." But those lofty ideals of 200 years past have been facing heavy weather for at least a generation, and there is every evidence that reviving such notions in the current climate of government in Washington and elsewhere remains a difficult task. Under the shroud of national security and other devices of secrecy, the bureaucrats go about their business without the knowledge and consent of the governed. This is so despite the fact that Congress provided the press and the people with a weapon—admittedly a blunt one—in the Freedom of Information Act of 1966. It gave the public a right to examine the documents in the possession of government agencies and thus the opportunity to find out what is being done in the name of the governed. But it's effective use is much more the exception than the rule.

Thanks to a notable recent exception, we now know that in the 1960s, the late J. Edgar Hoover ordered his agents at the FBI to undertake a "counterintelligence" program against what Mr. Hoover described as "black nationalist hate groups," among others. We know this because Carl Stern of NBC News took the trouble to go into court and win a law suit under the Freedom of Information Act. In theory, at least, FOIA reversed an older law that made disclosure difficult and established a policy that disclosure should be the norm and denial of information the exception. Unfortunately, the act has not worked that way. For one thing, there are a number of frustrating exceptions to the act. Beyond that, its mechanism is so cumbersome that only seven suits have been filed by news organizations since the act was passed.

Some of the blame for FOIA's ineffectiveness to date must rest on the news media. They have taken the view that news is immediate, and if they cannot get what they need for a story, they must move on. Very few journalists have been willing to take the time that the Freedom of Information Act now requires. Mr. Stern, for example, obtained the most recent set of documents on the FBI counterintelligence program 26 months after first seeking them.

The House of Representatives moved decisively this week to reduce the burden on those who wish to make use of the FOIA. It voted 383 to 8 for an amendment to the law proposed by Rep. William Moorhead (D-Pa.). The Moorhead Amendment does several important things to make the FOIA a better law. It reduces the number of days an agency has in which to say if it intends to provide requested information voluntarily. It places in the hands of the courts the question of whether national security is sufficient reason for a given agency to withhold information. It allows plaintiffs to recover their legal expenses if a court rules that an agency withheld material it should have turned over voluntarily. It adds the Office of Management and Budget to the list of agencies now covered by the act, and it requires all agencies to give an account to Congress each year of how it implemented the law.

A similar bill, sponsored by Sen. Edward M. Kennedy (D-Mass.), has cleared a subcommittee of the Judiciary Committee and should be ready for floor action shortly. The Nixon administration has made rumblings that could be the forecast of veto action, but that would be a meaningless gesture if the Senate action is as decisive as was that of the House. Attorney Ronald Plesser, who heads the Freedom of Information Clearinghouse and who represented Mr. Stern in his suit against the FBI, has estimated that this new legislation could have reduced the elapsed time of the Stern case from 26 months to six months. That is more in keeping with the needs of justice and the public's right to know what its government is up to. No known substitute for an informed electorate exists in a democratic society, and the Hoover papers make it clear once again how dangerous bureaucratic secrecy can be to the rights of a free people.

missed his free throw at the other end, however, and McNamara then tallied for Hand to make it 59–58.

A pair of St. Paul turnovers enabled Hand to move ahead as Fries was fouled by Owsianko in a rebounding scrap with 1:06 remaining, and the Hand center converted the one-and-one to make it 60–59.

St. Paul retaliated by going to its strength, clearing the way for Noon to work one-on-one against Hand's Bobby Isleib. Noon beat Isleib to the hoop on a drive, scored a layup while being fouled, and converted the free throw to make it 62–60 with 54 seconds showing. A McNamara jumper 11 seconds later tied it again, then St. Paul held on for the final shot.

The Falcons called a time out with 10 seconds to go, then tried to work the ball to Noon again for the big shot. Hand played exceptional defense, however, and St. Paul was forced to settle for an off-balance 20-footer by Majewski at the buzzer. The way things were going in the tournament one could have almost expected the ball to go in, but it hit the rim and dropped out, causing the overtime.

An unusual four-point play by St. Paul with 1:47 left in the extra period actually decided the game. After Fries and Noon traded hoops St. Paul regained possession and looked for the go-ahead score. Noon passed the ball to Corbin, who tossed in an 18-footer to make it 66–64. As Corbin released the ball, however, Noon took an elbow from Farmer, the foul was whistled, and Mark stepped to the line for a one-and-one try. He made both shots, and St. Paul had a 68–64 advantage.

Another McNamara score cut the gap of two points with 1:10 left, but then St. Paul started to freeze the ball. Majewski was fouled with 36 seconds to go, making the first shot but missing the second. Fries then scored on a rebound with 19 seconds to go to carve the margin down to one at 69–68, but Hand was still in a position where it had to foul to get the ball back.

Majewski was finally fouled by VanDeventer with three seconds left, and after a time out John sank both shots to wrap up the victory. McNamara then scored at the buzzer to leave the final margin, fittingly, at one point.

St. Paul, rated No. 15 in the tourney, finishes the season with the best record in school history, 17–8, while Hand, ranked fifth, concludes the year at 19–6.

It was a banner evening for Hartford County Conference teams as South Catholic defeated Naugatuck 71–57 in the second game of the twin bill to capture the Class A title. It was the second time in three years the league has had two champions, East won Class A and Northwest took Class B two years ago. Northwest then defended its B title successfully last year. The double header drew a crowd of 6,479, a new CIAC record.

St. Paul (71)	Fld	Fl	Pts
Kurban	3	0	6
Noon	14	5	33
Owsianko	3	1	7
Majewski	2	5	9
Corbin	7	0	14
Peilitier	1	0	2
Totals	30	11	71

Hand (70)	Fld	Fl	Pts
Farmer	4	1	9
McNamara	11	0	22
Fries	6	8	20
Isleib	0	0	0
Cassell	2	1	5
VanDeventer	6	2	14
Barry	0	0	0
Totals	29	12	70

TESTIMONY IN SUPPORT OF THE URBAN EMPLOYMENT ACT

HON. JAMES V. STANTON

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 3, 1974

Mr. JAMES V. STANTON. Mr. Speaker, I am today inserting into the RECORD another of the statements given in conjunction with my own before the House Economic Development Subcommittee on April 1. This is the testimony in support of the Urban Employment Act, H.R. 5808, offered by Joseph P. Furber, commissioner of economic development for the city of Cleveland. Mr. Furber's work in the field of economic development has been widely praised, and so I am especially pleased to have his support in this effort:

REMARKS PREPARED FOR THE ECONOMIC DEVELOPMENT SUBCOMMITTEE OF THE HOUSE PUBLIC WORKS COMMITTEE

(By Joseph P. Furber, Commissioner of Economic Development, City of Cleveland, April 1, 1974)

The division of economic development of the department of human resources and economic development, in the city of Cleveland, Ohio, is specifically charged by ordinance 254–A–68, (September 23, 1968) to—

". . . plan and implement progams to atract new business and industry and to assist the expansion or relocation of existing business or industry; to coordinate the activities and facilities of, and to cooperate with, public and private agencies in the area of industrial development and expansion, and to relate Federal and State assistance programs to the economic needs of the community."

Though the division has not been specifically charged with the responsibility for business and industrial retention, it is our belief that the sentence beginning ". . . and to cooperate with public and private agencies . . ." gives us this mandate. Therefore, it seems important to preface these remarks with the statement that our most important effort is business and industrial retention. The establishment of a healthy business climate achieved through a successful retention program logically represents the best long-range plan for a mature city's business expansion.

As you gentlemen are well aware, more than 80 percent of all business expansion is produced by existing business and industry. For that very reason our economic development strategy in Cleveland has been to concentrate upon the "Bird in the Hand" as opposed to the "Bird in the Bush."

The problems encountered by mature urban centers can be classified as follows: Municipal services, obsolescence and productivity, economic dislocation, pollution abatement, and land acquisition.

In the case of municipal services, a diversified industrial base has historically enabled Cleveland to grow. However, though the Cleveland S.M.S.A. continues to grow and prosper, economically speaking, the city has failed to keep pace with the region. Local efforts to develop and release even minimal supportive funds are further reduced because of the departure and closings of tax-paying employers. The resulting loss of real income to city employee and employer creates a greater dependency upon the city of Cleveland for expanded municipal services. Only a vital and healthy city economy is capable of delivering these services. The fiscal stability of the city can only be achieved by retaining, expanding and attracting a solid tax base. H.R. 5808 addresses itself to this problem.

The general obsolescence and marginal productivity of capital, land, labor and entrepreneurship need to be studied with an eye to finding innovative concepts capable of overcoming the disadvantages of a physically deteriorating and mature industrial region. The use of human resources in affected industrial areas, to function as a talent bank of leadership, needs exploration. Human resources are as worthy of venture capital investment as are land, buildings, and equipment, and perhaps of more lasting value. Local sources of capital need to be shown the advantages of encouraging economic vitality within the city. H.R. 5808 acts as an incentive for local investment in central cities.

Economic dislocation occurs when employees are unable to follow an employer when he moves to a suburban industrial park. The availability of housing and transportation tend to sever his economic ties most effectively. Good public transportation needs to be assessed in the light of whom it is designed to serve. Most certainly, it should best serve those members of its tax base most in need of its service.

Technological advancements occasion still more job losses to the least skilled. Because they lack the technology or training needed for our changing job market, they join the dislocated. A labor-rich manufacturing industry must remain competitive to stay within the city. The more current move to service industries is not conducive to increasing personal property taxes nor to a large labor force. H.R. 5808 encourages central city firms to solve these problems and remain close to the workforce which also conserves energy in this time of need.

The effects of increasingly vigorous enforcement of the Environmental Pollution Act, though urgently needed to halt the city's pollution in balance with the conservation of energy currently mandated, also coincides with Cleveland's economic decline. Every effort should be pursued which will help bring together those affected, so as to reduce the impact and cost of pollution abatement. H.R. 5808 offers a way to overcome this problem by permitting investment in the latest machinery and equipment.

The land available for industrial expansion within a mature city is generally more costly, less accessible, and more difficult to assemble in usable parcels. Available land may contain homes; be landlocked by railroads; used for drainage; revert to a prior zoning; or be subject to a variance upon sale; seem threatening to a councilman, etc. There are many reasons for this plight, and a thorough study and identification of the impediments to assemblage of usable land needs to be done. Attention should be focused upon the proven concept of an improved land bank in the city of Cleveland. H.R. 5808 specifically addresses itself to industrial land banks.

Now I would like to focus on how H.R. 5808 will help Cleveland's urban economy, particularly with reference to specific industrial and commercial needs.

The act expresses a concern about business losses and industrial outmigration from the central cities, that speaks directly to Cleveland's situation. For example, in 1973, the city planning commission reported that between 1966 and 1971 the city lost 12,058 jobs and 258 firms. This has contributed to an unemployment rate that is double the national average. On the other hand, the surrounding suburbs in this same five-year period gained 2,564 jobs and 107 firms. The city planning commission further estimated

that between 1970 and 1975, 60,000 men and 10,000 women will join the labor force, while 20,000 persons will retire. Of the 50,000 persons looking for work, there will only be about 30,000 jobs available. Thus, the present employment outlook is not encouraging for Cleveland.

In keeping with our local legislative mandate, we have initiated and continue to support, four nonprofit development corporations which are working for the industrial and commercial well-being of the localities wherein they are located. Two additional area groups are in the process of being organized, and they are the Collinwood Area Development Corporation and the St. Clair Addison Road Area. The existing local development corporations are the Woodland East Community Organization, the Lakeside Area Development Corporation, the Detroit Shoreway Community Development Oragnization and the Buckeye Area (Cleveland) Development Corporation.

All of these groups are excellent vehicles through which to carry out the intent of the proposed legislation, H.R. 5808.

Item—These area development corporations are self-help in nature and are representative of large and small industries and commercial establishments. They are concerned about both the present problems and the future of the neighborhoods of the central city where they are located.

Item—As such, these groups cooperate closely with the city and would therefore represent excellent vehicles through which funds could be granted or loaned as spelled out in title VIII of this legislation.

Item—They account for a sizable number of the jobs and taxes upon which the economy of the city depends, i.e., Ladco, 6,100 jobs; WECO, 2,500 jobs; DSCDC, 4,500 jobs; BADC, 1,400 jobs; SCARA, 5,800 jobs; and CADCO, 600 jobs.

Item—They are legal entities in that they are incorporated with the State, and at the same time qualify for tax exempt status under the IRS Code 501(c)(3) or (c)(4).

Item—Each corporation is grounded on sound socio-economic studies which set forth rationale for the said corporation and the recommendations for action on felt needs of resident firms.

These corporations are already involved in the following projects: Auxiliary police patrols; neighborhood cleanup campaigns in cooperation with residents; area beautification as via shade tree planting; coordination with city hall resources and agencies; enhancing a sense of community via street festivals, newsletters, and other community efforts; summer employment of youth; neighborhood employment where and when legally possible.

A number of these nonprofit corporations are presently making comprehensive analyses of their needs and are projecting short and long-range plans that will lead to programs for area development and in-town industrial parks. These include the following:

Mini-bus systems, internal and external to the area; ways to alleviate crowded parking conditions which are having serious consequences for residents and merchants as well as the flow of trucking suppliers, and customers for industrial firms; establishment of industrial clinics to meet OSHA standards; working with city hall to vacate and/or pave streets, install high intensity lighting, rezone contingent property for industrial usage, and acquire vacant housing and demolish it for plant expansion or parking needs.

In short, these area development corporations are ready, able, and most importantly, willing—to avail themselves of parts A and B of this act, through loans and grants for land banks, building dehabilitation or demolition, and the like. The division of economic development is ready, willing and able to assist. H.R. 5808 opens the door.

Another area where this act will prove of vital benefit is in reference to part C "urban industrial development loans", i.e., to aid in financing any project in the central city for the purchase or development of land and facilities, and to guarantee loans for working capital made to private borrowers by private lenders.

Support for this provision stems from the numerous retention cases that come to the attention of our department, specifically those firms which are in need of funds for land, plant facilities, or working capital. Usually they are not in a position to secure financing from private lenders, or if they are, they cannot secure the necessary collateral from third parties such as government lending programs. It must be remembered, in this connection, that Cleveland continues to have a conservative banking climate. They are not prone to make loans to business establishments involving any significant degree of risk—as where the firm may be small, or in the incubation stage; or where it is located in what is perceived to be a transitional or insecure neighborhood. Certain of these firms could receive the necessary private financing if they moved out of the central city. Thus, the provision of loans and loan guarantees for businesses in Cleveland will fill a much needed gap and help to prevent the flight of jobs and industry to the suburbs.

Gentlemen, in conclusion I ask you to accept the three basic premises upon which our economic development strategy in the city of Cleveland is built:

1. A job is an integral part of man's environment;

2. Cleveland exists, as do other cities, to fulfill two economic needs: As a place to work and as a place to live; and

3. Central cities are handicapped due to the fact that they hold legal jurisdiction over a geographic area that does not correspond to the sphere of their economic influence.

In my opinion, the only Feedral agency that has addressed itself to the economic problems of mature urban centers is the Economic Development Administration of the U.S. Department of Commerce. H.R. 5808 continues and expands upon that agency's good work.

ADDITIONAL SUPPORT FOR FREEDOM OF INFORMATION ACT AMENDMENTS

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 3, 1974

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, another leading American newspaper has praised the action of the House in passing H.R. 12471, our bill to strengthen the Freedom of Information Act of 1966 (5 U.S.C. 552). The Des Moines Register in a recent editorial specifically referred to the amendment that is contained in H.R. 12471 that would permit Federal courts to review, in camera, Government documents ordered withheld because of security clasification markings, thereby undoing the mischief resulting from the Supreme Court's ruling in the *Mink* case last year.

As the editorial so accurately states:

Giving an Administration an unreviewable right to hide information through the use of secrecy stamps is tantamount to making the Freedom of Information Act worthless. The House is on the right track with its action on court review. Congress as well as private citizens have a "need to know" and a right to assurance that "national security" isn't being used to hide information that belongs in the public domain.

Mr. Speaker, the full text of the editorial follows:

[From the Des Moines Register, Mar. 25, 1974]

LIMITING OFFICIAL SECRECY

The U.S. House has taken a step toward lifting the veil of government secrecy by voting to give the courts power to look behind the secrecy stamps placed on government documents.

The Freedom of Information Act is supposed to give the public access to a wide range of government information. However, the act exempts from disclosure nine classes of information, including matters "specifically required by executive order to be kept secret in the interest of the national defense or foreign policy."

This exemption enables an administration to withhold documents simply by stamping them secret or giving them a similar security classification.

A circuit court of appeals ruled in 1972 that judges are empowered under the Freedom of Information Act to examine classified documents and order the non-secret portions disclosed. But the U.S. Supreme Court declared last year that judges are not authorized to do this under the act. The court said the law "makes wholly untenable any claim that the act intended to subject the soundness of executive security classifications to judicial review at the insistence of any objecting citizen."

Justice Potter Stewart agreed with the majority, but he was sharply critical of Congress. Justice Steware declared:

"[Congress] has built into the Freedom of Information Act an exemption that provides no means to question an executive decision to stamp a document 'secret,' however cynical, myopic, or even corrupt that decision might have been . . . Without disclosure . . . factual information available to the concerned executive agencies cannot be considered by the people or valuated by the Congress. And with the people and their Congress reduced to a state of ignorance, the democratic process is paralyzed."

Justice William Douglas added:

"The much advertised Freedom of Information Act is on its way to becoming a shambles. Unless federal courts can be trusted, the executive [branch] will hold full sway and make even the time of day 'top secret' . . . The executive branch now has carte bianche to insulate information from public scrutiny whether or not the information bears any discernible relation to the interests sought to be protected by [the exemptions] of the act."

The House has taken these rebukes to heart by voting to give judges authority to examine documents whose disclosure is sought, to determine whether information is being withheld by use of illegal or improper security classifications.

Giving an administration an unreviewable right to hide information through the use of secrecy stamps is tantamount to making the Freedom of Information Act worthless. The House is on the right track with its action on court review. Congress as well as private citizens have a "need to know" and a right to assurance that "national security" isn't being used to hide information that belongs in the public domain.

be substituted therefor the text of S. 3344, as reported by the Committee on Labor and Public Welfare with an amendment in the nature of a substitute.

The motion was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that S. 3344 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPORT ON IMPLEMENTING PROVISIONS OF DEFENSE APPROPRIATION ACT, 1974—MESSAGE FROM THE PRESIDENT

The VICE PRESIDENT laid before the Senate a message from the President of the United States, which was referred to the Committee on Appropriations. The message is as follows:

To the Congress of the United States:

In accordance with Section 812(d) of the Department of Defense Appropriation Authorization Act, 1974 (Public Law 93-155), I am pleased to submit the following report to the Congress on the progress made since my last report on February 20, 1974 in implementing the provisions of Section 812 of the Act cited above.

On April 25, representatives of the United States and the Federal Republic of Germany signed a new offset agreement covering fiscal years 1974 and 1975. The offset to be provided during this two year period is larger in dollar terms and provides more substantial economic benefits to us than any previous offset agreement. At an exchange rate of $1=DM 2.669, the dollar value of the agreement is approximately $2.22 billion over the two year period.

The composition of the agreement is generally similar to that of previous offset agreements, but there are a number of features that significantly increase its value to the United States, including substantial budgetary relief. As before, German military procurement in the United States represents the largest single element. In the present agreement it amounts to $1.03 billion (at $1.00=DM 2.669). Other attractive features include German willingness to continue funding the rehabilitation of facilities used by American troops in the Federal Republic; to take over the payment of certain real estate taxes and airport charges in connection with US military activities in Germany; to purchase from the US Atomic Energy Commission enriched uranium, including enrichment services; and—for the first time in the framework of an offset agreement—to finance US-German cooperation in science and technology.

As in the case of previous offset agreements, the new agreement makes provision for German purchases of special U.S. Government securities on concessionary terms. The significant interest savings resulting from an $[illegible]3 million loan over seven years at 2½ percent, together with the above-mentioned German contributions to our troop stationing costs such as troop facilities rehabilitation and absorption of taxes and airport fees, substantially cover the additional costs we bear by deploying our forces in the Federal Republic rather than in the United States.

Benefits contained in the agreement constitute a major element in the effort to meet the requirements of Section 812. The agreement is the product of many months of difficult negotiations, involving not only the negotiators appointed by our two governments, but also personal exchanges at the highest levels of the two governments.

In my last report to the Congress, I stated that U.S. expenditures entering the balance of payments as a result of the deployment of forces in NATO Europe in fulfillment of treaty commitments and obligations in FY 1974 are estimated to be approximately $2.1 billion. That estimate still holds.

I anticipate that the bilateral offset agreement with the Federal Republic of Germany, together with arrangements involving other Allies, will meet the requirements of Section 812. This will permit us to maintain our forces in NATO Europe at present levels. In this connection, I would like to point out that the NATO study on allied procurement plans, which I referred to in my last report to the Congress, indicates that allied military procurement from the U.S. in FY 1974 will be significant despite the fact that many of our Allies have suffered a worsening in their trade balance and face the possibility of even greater deterioration. I will provide the Congress with further information on satisfying the requirements of Section 812 in my August report.

RICHARD NIXON.

THE WHITE HOUSE, *May 16, 1974.*

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

REPORT OF SECRETARY OF DEFENSE

A letter from the Deputy Secretary of Defense, reporting, pursuant to law, on disbursements made against the appropriation Contingencies, Defense, for current and prior years' obligations through March 31, 1974. Referred to the Committee on Appropriations.

APPROVAL OF LOAN FOR CONSTRUCTION OF CERTAIN TRANSPORTATION FACILITIES

A letter from the Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law, on the approval of a loan to Square Butte Electric Cooperative of Grand Forks, N. Dak., to finance the land, land rights and clearing required for the construction of certain transmission facilities (with accompanying papers). Referred to the Commitee on Appropriations.

REPORT ON CERTAIN PROJECTS PROPOSED FOR THE ARMY RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reportngi, pursuant to law, on seven projects proposed to be undertaken for the Army Reserve (with accompanying papers). Referred to the Committee on Armed Services.

FACILITIES PROJECT PROPOSED FOR THE ARMY RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a facilities project proposed to be undertaken for the Army Reserve, at Brockton, Mass., and of the cancellation of certain projects (with accompanying papers). Referred to the Committee on Armed Services.

PROJECTS PROPOSED TO BE UNDERTAKEN FOR THE ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on eight projects proposed to be undertaken for the Army National Guard (with accompanying papers). Referred to the Committee on Armed Services.

REPORT ON FEDERAL CONTRIBUTIONS PROGRAM EQUIPMENT AND FACILITIES

A letter from the Director, Defense Civil Preparedness Agency, transmitting, pursuant to law, a report on Federal Contributions Program Equipment and Facilities, for the quarter ended March 31, 1972 (with an accompanying report). Referred to the Committee on Armed Services.

REPORT ON STRATEGIC AND CRITICAL MATERIALS STOCKPILING PROGRAM

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, a report on the strategic and critical materials stockpiling program, for the 6-months period ended December 31, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

REPORT ON ACTIVITIES OF THE U.S. TRAVEL SERVICE

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report of the U.S. Travel Service, for calendar year 1973 (with an accompanying report). Referred to the Committee on Commerce.

PROPOSED LEGISLATION FROM SECRETARY OF COMMERCE

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to amend section 905(c) of the Merchant Marine Act, 1936 (with accompanying papers). Referred to the Committee on Commerce.

REPORT OF DISTRICT OF COLUMBIA BAIL AGENCY

A letter from the Director, District of Columbia Bail Agency, Washington, D.C., transmitting, pursuant to law, a report of that

Agency, for the calendar year 1973 (with an accompanying report). Referred to the Committee on the District of Columbia.

PROPOSED LEGISLATION FROM CIVIL SERVICE COMMISSION

A letter from the Chairman, U.S Civil Service Commission, transmitting a draft of proposed legislation to amend the Social Security Act to change the effective date of section 1862(c) to coincide with the effective date of a national health insurance law (with accompanying papers). Referred to the Committee on Finance.

PROPOSED LEGISLATION FROM THE RENEGOTIATION BOARD

A letter from the Chairman, the Renegotiation Board, transmitting a draft of proposed legislation to extend and amend the Renegotiation Act of 1951 (with an accompanying paper). Referred to the Committee on Finance.

REPORT ON INVENTORY OF NONPURCHASED FOREIGN CURRENCIES

A letter from the Fiscal Assistant Secretary, Department of the Treasury, transmitting, pursuant to law, a report of an inventory of nonpurchased foreign currencies, as of December 31, 1973 (with an accompanying report). Referred to the Committee on Foreign Relations.

INTERNATIONAL AGREEMENTS ENTERED INTO BY THE UNITED STATES

A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting certain documents relating to international agreements, other than treaties, entered into by the United States (with accompanying papers). Referred to the Committee on Foreign Relations.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Federally Supported Attempts To Solve State and Local Court Problems; More Needs To Be Done," Law Enforcement Assistance Administration, Department of Justice, dated May 8, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "More Competition Needed in the Federal Procurement of Automatic Data Processing Equipment," General Services Administration, dated May 7, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Need for Increased Use of Value Engineering, a Proven Cost-Saving Technique, in Federal Construction," multiagency, dated May 6, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Interim Report on the Commodity Exchange Authority and on Commodity Futures Trading," Department of Agriculture, dated May 8, 1974 (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED CONCESSION CONTRACT WITHIN THE NATIONAL PARK SYSTEM

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed concession contract under which Park Reservation System will be authorized to establish, maintain, and operate a computerized campsite reservation system for designated areas within the National Park System for designated areas within the National Park System (with accompanying papers). Referred to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR A RESEARCH PROJECT

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with W. A. Wahler & Associates, Palo Alto, Calif., for a research project entitled "Study of High Modulus Backfill Systems" (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

PROPOSED CONTRACT FOR A RESEARCH PROJECT

A letter from the Deputy Assistant Secretary of the Interior, transmitting, pursuant to law, a proposed contract with Cities Service Oil Co., Tulsa, Okla., for a research project entitled "Improved Oil Recovery by Micellar-Polymer Flooding" (with an accompanying paper). Referred to the Committee on Interior and Insular Affairs.

AUDIT REPORT OF FUTURE FARMERS OF AMERICA

A letter from the president, board of trustees, Future Farmers of America Foundation, Inc., transmitting, pursuant to law, a report of the audit of the accounts of the foundation, for fiscal year ended December 31, 1973 (with an accompanying report). Referred to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports on temporary admission into the United States of certain aliens (with accompanying papers). Referred to the Committee on the Judiciary.

REPORT ON CERTAIN DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders relating to certain defector aliens (with accompanying papers). Referred to the Committee on the Judiciary.

REPORT ON U.S. COMMISSION ON CIVIL RIGHTS

A letter from the Chairman, U.S. Commission on Civil Rights, transmitting, pursuant to law, a report entitled "Counting the Forgotten, the 1970 Census Count of Persons of Spanish Speaking Background and in the United States" (with an accompanying report). Referred to the Committee on the Judiciary.

REPORT OF FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Office of Legislative Service, transmitting, for the information of the Senate, a republication copy of the annual report of the Food and Drug Administration, for the fiscal year ended June 30, 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT OF DRUG ABUSE COUNCIL

A letter from the Chairman of the Board, Drug Abuse Council, transmitting, pursuant to law, a report of that Council, for the year 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT OF FEDERAL ACTIVITIES UNDER THE VOCATIONAL REHABILITATION ACT

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the final annual report of Federal activities under the Vocational Rehabilitation Act, for July 1, 1972 through June 30, 1973 (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Secretary of Health, Education, and Welfare transmitting a draft of proposed legislation to provide assistance to local educational agencies which are in the process of eliminating discrimination or minority group isolation among students or faculty in elementary and secondary schools, and for other purposes (with accompanying papers). Referred to the Committee on Labor and Public Welfare.

PROPOSED LEGISLATION FROM CIVIL SERVICE COMMISSION

A letter from the Chairman, U.S. Civil Service Commission, transmitting a draft of proposed legislation to amend chapter 83 of title 5, United States Code, to establish time limitations in applying for civil service retirement benefits, and for other purposes (with an accompanying paper). Referred to the Committee on Post Office and Civil Service.

PROSPECTUS PROPOSING ACQUISITION OF SPACE BY GENERAL SERVICES ADMINISTRATION

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, a prospectus proposing the acquisition of space in an office building to be constructed in Jackson, Miss. (with accompanying papers). Referred to the Committee on Public Works.

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, prospectuses proposing entering into leases for space presently occupied at certain locations (with accompanying papers). Referred to the Committee on Public Works.

REPORT OF BUILDING PROJECT SURVEY FOR SITKA, ALASKA

A letter from the Acting Administrator, General Services Administration, transmitting, pursuant to law, a report of Building Project Survey for Sitka, Alaska (with accompanying papers). Referred to the Committee on Public Works.

AMENDMENTS TO PROSPECTUSES FOR PUBLIC BUILDING PROJECTS

A letter from the Administrator, General Services Administration, transmitting, pursuant to law, amendments to the approved prospectuses for public building projects at Lukeville, Ariz., and Laredo, Tex. (with accompanying papers). Referred to the Committee on Public Works.

REPORT ENTITLED "THE ECONOMICS OF CLEAN WATER—1973"

A letter from the Administrator, U.S. Environmental Protection Agency, transmitting, pursuant to law, a report entitled "The Economics of Clean Water—1973" (with an accompanying report). Referred to the Committee on Public Works.

PROPOSED LEGISLATION FROM ATOMIC ENERGY COMMISSION

A letter from the Acting Chairman, U.S. Atomic Energy Commission, transmitting a draft of proposed legislation to amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes (with accompanying papers). Referred to the Joint Committee on Atomic Energy.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A letter, in the nature of a petition, from the University of Michigan Medical Center, University Hospital, Ann Arbor, Mich., relating to radiopharmaceuticals for diagnosis and treatment. Referred to the Joint Committee on Atomic Energy.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary, with an amendment:

S. 2543. A bill to amend section 552 of title 5, United States Code, commonly known as the Freedom of Information Act (Rept. No. 93-854).

FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. KENNEDY. Mr. President, I am pleased to file today on behalf of the Senate Judiciary Committee a unanimous report recommending passage of S. 2543, as amended. The bill contains a series of amendments to the Freedom of Information Act, which are intended to facilitate greater and more expeditious public access to Government information and to strengthen the public's remedy against agencies and officials who violate the act.

Last year the Subcommittee on Administrative Practice and Procedure, in conjunction with two other subcommittees, held 11 days of hearings on freedom of information and Government secrecy. Following those hearings I introduced S. 2543, which contained a number of proposed changes to the FOIA designed to meet the problems with agency administration of the act that were brought out in our hearings. In February the subcommittee reported out my bill. I was pleased to have been able to work with the ranking minority member of the full committee, Senator HRUSKA, to develop a bill which was supported by every member of the committee when ordered reported last week. I want to commend the Senator from Nebraska and his able staff for their efforts in developing the committee bill which is being filed today.

When I introduced S. 2543 I observed that "If the people of a democratic nation do not know what decisions their government is making, do not know the basis on which those decisions are being made, then their rights as a free people may gradually slip away, silently stolen when decisions which affect their lives are made under the cover of secrecy."

Former Chief Justice Earl Warren later last year made an impassioned plea for compelling "our public officials to keep the avenues of information open so the public can know and evaluate the character of their work from day to day." "If we are to learn from the debacle we are in," said the Chief Justice, "we should first strike at secrecy in Government wherever it exists, because it is the incubator for corruption."

Mr. President, S. 2543 reflects a strong commitment to promoting an open and responsive Government for all Americans. It is designed to provide the people with a stronger mechanism for keeping informed about what decisions their Government is making and to require that public officials keep the avenues of information open to the public.

During our hearings last year witnesses outside the executive branch pointed out three major problems frequently encountered in obtaining information from the Government under the Freedom of Information Act. First, they complained of consistent, unreasonable delays on the part of Government agencies in responding to requests for information. Too often these delays are brought about because agency officials do not want to disclose embarrassing information, even though that information may clearly be required to be disclosed under the FOIA.

Second, they expressed concern over the inability of Federal courts—after the Supreme Court's decision in EPA against Mink—to review agency decisions to classify documents in the interest of national defense and foreign policy. Justice Potter Stewart, in a concurring opinion in the Mink case, had stated that Congress built "into the Freedom of Information Act an exemption that provides no means to question an executive decision to stamp a document 'secret', however cynical, myopic, or even corrupt that decision might have been." We were thus urged to build into the act a process that would allow judicial review of classification decisions.

Third, they urged that Government officials be made more sensitive to the mandates of and more accountable under the FOIA. Officials handling FOIA requests have had little to lose by delaying responses or withholding records without justification. Few members of the public have the resources to go to court. News stories go stale with time, so the press loses its incentive after unreasonable initial delays. And possible embarrassment to the agency or its constituency is always more likely to be avoided by withholding than by disclosure. Thus, there exists little incentive for an agency or official to follow strictly the letter or the spirit of the FOIA.

I am pleased, Mr. President, that S. 2543 as amended addresses each of these important issues. One provision set definite time limits for agencies to respond to an appeal of an initial denial. In very limited and extraordinary classes of cases, agencies may certify—with approval of the Attorney General and publication in the Federal Register—that 30 days are necessary for handling initial requests because of the large numbers of records and wide geographic distribution involved. And in unusual circumstances, narrowly defined by the bill, the agency may add 10 days to its response time for either the initial or the appeal period. This should give agencies sufficient time to handle FOIA requests, while not allowing them to be dilatory in their practices. Each year they will have to report to Congress on the time it takes to handle requests and appeals, so that there will be a regular monitoring of agency compliance with the time requirements of the Act.

Where agencies want to withhold documents under a statute or Executive order as being classified in the interest of national defense or foreign policy S. 2543 as amended provides that courts may examine the documents themselves in camera and must determine whether in fact the documents were properly classified. The bill sets out procedures to protect particularly sensitive information, and it provides that courts should utilize an in camera examination only if they cannot resolve the matter on the basis of arguments and affidavits. But it firmly establishes the principle of judicial review of—and accountability outside the executive branch for—agency decisions to classify material.

Three provisions of the bill are directed at the problem of accountability and responsibility in the agencies for adherence to the requirements of the Freedom of Information Act. To begin with, the names and positions of persons responsible for agency denials of information must be conveyed to the requester at each stage, and cumulated and reported to the Congress annually. The objective of this provision is not merely to single out publicly officials who work on FOIA requests, but to let them know that they must bear actual responsibility for denials that go out over their signatures.

Another provision of the bill allows the imposition of attorneys' fees and court costs against the agency in many cases where the requester substantially prevails in litigation. The intention here is not to encourage unnecessary litigation, but to let the agencies know that these fees and costs will no longer be an effective barrier to judicial enforcement of the FOIA for a large number of persons requesting information. Stricter adherence to the Act by these agencies should ensue.

Finally, a new provision added to the FOIA puts teeth into its requirements; it allows courts to impose disciplinary sanctions against Federal officials who violate the act. An innovation in administrative procedure, this Government accountability section provides that if a court finds Government records to have been withheld without a reasonable basis in law, the court shall order disciplinary action—up to a 60-day suspension—against the responsible Government official. The inclusion of this sanction for violation of the act clearly indicates a congressional commitment to openness, not secrecy, on the part of every officer and employee of the Federal Government.

Mr. President, democracy is indeed a fragile commodity. In a government of, by, and for the people, the people must have a right to obtain information from their government. And the people must have available, as well, a mechanism for securing that information. The Freedom of Information Act embodies that right and that mechanism. Both are strengthened by the bill being reported today.

Mr. HRUSKA. Mr. President, the hallmark of a democracy is an informed citizenry. It is elementary that the people cannot govern themselves if they cannot know the actions of their government. It is for this reason that we must remain committed to the goal of implementing the public's right to know to the greatest extent consistent with good government.

To this end, Congress passed the Freedom of Information Act in 1966. That act imposed on the executive branch an affirmative obligation to provide access to official information that previously had been long shielded from public view. Under that act, an agency must comply with a citizen's request for information unless it can show that competing interests, such as the right to privacy or the national defense, require the information to remain confidential.

While the Freedom of Information Act has, by and large, worked successfully, experience with the administration of the act indicates that some changes are necessary. In considering this legislation, the Judiciary Committee found that the primary obstacles to the act's effective implementation have been procedural

rather than substantive. S. 2543 is designed to remove these obstacles. Its basic purpose is to facilitate more free and expeditious public access to the information the act obligates the Government agencies to disclose.

Senator KENNEDY has already outlined the provisions of the bill. The basic features of the bill I consider worth emphasizing are the following:

First, the bill requires agencies to publish indexes of its records available to the public so that the citizen can know what information is held by the agency;

Second, it prohibits excessive charges for the information requested;

Third, it expedites public access to Government information by requiring Government agencies to respond to requests for information within specified time periods;

Fourth, the bill insures responsible responses to requests by holding accountable those officials who withhold information without a reasonable basis;

Finally, S. 2543 insures the integrity of the classification of a classified document by allowing the courts to review the document in camera.

Mr. President, it is my view that this bill, as amended, will secure the right of the individual to gain access to all the official information that good government and the rights of the individual will permit.

Since the close of the hearings held on the Freedom of Information Act, Senator KENNEDY and his fine staff have worked with me and my staff to draft a bill that, in the words of the Senate Judiciary Committee in considering the Freedom of Information Act in 1966, provides "a workable formula which encompasses, balances and protects all interests, yet places emphasis on the fullest responsible disclosure." I believe that S. 2543 does just that. It has my unvarying support.

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

S. 3511. An original bill to increase the availability of urgently needed mortgage credit for the financing of housing and other purpose (Rept. No. 93-859).

Mr. SPARKMAN. Mr. President, I am reporting to the Senate today a bill cited as "The Emergency Housing Finance Act of 1974." This bill would broaden existing law with respect to the use of mortgage credit for the financing of housing and would increase authorizations for the continuation of existing housing assistance and community development programs for fiscal year 1975. The bill is to provide temporary authority to update existing programs until the provisions of the Senate-passed omnibus bill, S. 3066, the Housing and Community Development Act of 1974, can be implemented.

The Senate passed the omnibus bill on March 11 and is waiting for the House of Representatives to mark up a companion version to complete congressional action on the measure. I am hopeful that the two Houses can agree in conference soon on a final version and have it signed into law by the President before the end of this fiscal year. If this is done, we would not need to pass the interim bill.

The dilemma we are facing is how to assure that needed legislation is passed to continue existing programs in case the omnibus bill establishing new programs is not passed by July 1, 1974, without prejudicing passage of the omnibus bill now wending its way through the House of Representatives. Our committee and the Senate worked hard and long on developing and passing S. 3066, which is one of the most comprehensive and effective housing bills ever before the Congress. and it is extremely important that nothing be done to jeopardize its final passage.

Mr. President, I have kept in touch with the House leaders on the omnibus legislation and have been assured that a bill, somewhat reduced from the Senate version, will be forthcoming within the next few weeks. With this assurance, I believe it is best to hold up Senate passage of the interim bill for a short while until a clearer picture emerges on the House action and the final approval by the Congress and the President of the omnibus legislation. If such approval is assured, no action is needed on the interim bill. If, however, we see no hope for an omnibus bill, we would move the interim bill for prompt consideration by the House and the President.

Mr. President, I should like to say a word or two about the President's message on housing which came to the Senate on Friday, May 10. The President's message was in two parts—one on immediate action and the other on pending legislative proposals. On the latter, he urged passage of housing provisions almost all of which are contained in the omnibus bill, S. 3066, already passed by the Senate.

The second and most significant part of his message authorizes immediate action to be taken by the Treasury, the Government National Mortgage Association, and the Federal Home Loan Bank System to increase financial support for the mortgage market. For the most part, the President implemented some obscure legislative authority already on the books. The results of such implementation may be helpful but the beneficiaries are unlikely to be the families most in need of assistance, and we will have to wait and see whether this action is enough to make any difference in the depressed state of home construction at this time.

With respect to GNMA, the President wouldl continue the tandem plan authority given to GNMA last January to purchase mortgages at a below market interest rate. At that time, the President announced that GNMA would purchase 200,000 mortgages at a 7¾ percent interest rate but now, 5 month later, only about one-fourth of such mortgages has been purchased. On Friday, the President announced that he is authorizing GNMA to purchase 100,000 mortgages at an 8-percent interest rate. I do not understand why the January program is moving so slowly. One reason given is the terribly low production of the FHA offices based on what I hear is the frightfully low morale of local FHA staffs. If the lag in the earlier program is any criterion for the new program, I wonder how significant an impact we can expect from the new proposal at an even higher interest rate. Furthermore, I wonder how helpful such a program will be to the low and moderate income families where the greatest need exists. The statutory ceiling for GNMA mortgages is $33,000. The President announced a $3.3 billion program so he must expect practically all of the mortgages will be at the ceiling level. A $33,000 mortgage supports a $35,000 or even higher priced house so the question is how many moderate income families can afford a $35,000 house at an interest rate of 8 percent.

I would have the same comment with reference to the President's $4 billion mortgage program financed through the Federal Home Loan Bank System. The ceiling on these mortgages is $45,000 which could finance homes priced well above $50,000. A program at such prices will be of little help to the moderate income American family.

The third program is even more questionable because Treasury funds would be committed to help support a $3 billion program of 8¾ percent mortgages with ceilings of $35,000 through the Federal Home Loan Mortgage Corporation. A 30-year, $35,000 mortgage with an 8¾ percent interest rate would require a monthly amortization payment of $275. Adding the typical taxes, insurance and utilities would call for a total monthly outlay of about $375. To afford such a payment would require incomes of around $20,000 or more, or somewhere in the upper 15 percent of the income scale for American families.

My concern is that the middle-income American family is not being helped by this program. Federal subsidies amounting to millions of taxpayer dollars will be used to benefit families at income levels well above the average, and nothing is being done for families at the middle or lower income levels. In fact, I wonder how much of this money might go to finance second homes for upper income families.

The President has frozen funds for programs of benefit to the lower income families since January, 1973. One of the reasons given for the freeze was the excessive cost to the Treasury. If the President wanted to be helpful and spur construction and provide housing where it is needed most, all he would have had to do was to release the FHA section 235 or 236 funds already appropriated by the Congress. I suppose in today's political environment, it is too much to expect the President to take this route. Perhaps once new legislation is passed which will reaffirm Congressional intent that the Government's first priority should be to assist the needy low and moderate income family, we shall see a more balanced program coming forth from the Administration. In the meantime, I suppose we have no choice but to go along with the President's plan. It will help out some, but it is obvious that, until we get the omnibus bill passed and implemented, anything we do now is only a stop-gap measure.

Mr. President, another area of con-